IMPROVING INSURANCE FOR CONSUMERS—INCREASING UNIFORMITY AND EFFICIENCY IN INSURANCE REGULATION

HEARING

BEFORE THE

SUBCOMMITTEE ON
FINANCE AND HAZARDOUS MATERIALS

OF THE

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HOUSE OF REPRESENTATIVES

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IMPROVING INSURANCE FOR CONSUMERS—INCREASING UNIFORMITY AND EFFICIENCY IN INSURANCE REGULATION

THURSDAY, JULY 20, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON FINANCE AND HAZARDOUS MATERIALS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:51 a.m. in room 2123, Rayburn House Office Building, Hon. Michael G. Oxley (chairman) presiding.

Members present: Representatives Oxley, Gillmor, Ganske, Shimkus, Towns, Barrett, Luther, and Dingell (ex officio).

Staff present: Robert Gordon, majority counsel; Yong Choe, legislative clerk; and Bruce Gwinn, majority counsel.

Mr. OXLEY. The subcommittee will come to order and the Chair would recognize himself for an opening statement.

Today's hearing is on Improving Insurance for Consumers—Increasing Uniformity and Efficiency in Insurance Regulation. We are fortunate to have before us today three distinguished witnesses: George Nichols, Kentucky Insurance Commissioner and President of the National Association of Insurance Commissioners; Julie Williams, First Senior Deputy Comptroller and Chief Counsel of the Office of the Comptroller of the Currency; and the Honorable Neil Breslin, State Senator for New York, on behalf of the National Conference of Insurance Legislators.

This committee has a long history of scrutinizing State insurance regulation. Last term, as a part of the financial modernization legislation, this Congress enacted a provision called NARAB, the National Association of Registered Agents and Brokers. Under our current system of State regulation, a broker trying to sell insurance for a shipment of goods being transported from Ohio to New York has to be licensed in every State the vehicle passes through, with each State not only imposing licensing fees, but also separate continuing education requirements, registration requirements, and other potential barriers such as fingerprinting requirements.

Since an insurance license is required for each line of insurance sold, trying to meet each State requirement can be extremely burdensome. NARAB would require a majority of the States within 3 years to have uniform or reciprocal agent licensing laws. If the States do not reach this goal, then a self-regulating organization would be established to set uniform national criteria for agent licensing.

NARAB was a critical first step toward uniformity in insurance regulation, to bring lower prices and more availability for consumers. Now we need to take the next step, to establish more uniformity for insurance underwriting.

Under our current system of regulation, an insurer wanting to provide a new product to consumers nationwide has to get the product approved by 50 different State insurance commissioners. This is a process that can take years. In addition to product approval delays, insurers must undertake extensive rate filings and policy form approvals which not only cause additional delay, but often result in significantly reduced willingness by insurers to provide coverage, leaving consumers in some areas with few or no insurance companies willing to insure their risks.

Our committee has received a proposal from one banking insurance association to create an optional Federal charter for insurers, based on the 140-year-old dual banking system. This approach is not my first preference. But in the absence of significant uniformity reforms at the State level, it is something I believe Congress may consider in the future.

We have also received a statement of intent from the NAIC signed by all the insurance commissioners regarding their commitments to achieving uniformity. They have demonstrated now that they can talk the talk; if they can also walk the walk, then insurance consumers and producers can fully benefit from uniformity without the need for a new Federal system.

There are several other approaches to achieving uniformity which this committee will be considering. State Senator Breslin will discuss the possibility of interstate compacts. Various trade associations have suggested an approach similar to NARAB, giving the States a certain period of time to achieve a level of uniformity, with certain Federal uniform standards established after that time if the States fail in their effort.

I am going to convene a second hearing in early September, after the NAIC completes a series of task force meetings, to assess what progress has been made and whether there is a sufficient continuing commitment to uniformity. I hope that the NAIC working groups will not only be able to come up with specific proposals for achieving their goals, but to attach specific timeframes to implement those proposals in the 50 States.

I have asked President Nichols to join us today to talk about the NAIC's commitment to uniformity and what he thinks his organization will be able to accomplish during his tenure. I applaud the strong leadership he has shown to date, and look forward to working with him, the NAIC, and the States, on any Congressional reforms that are needed to facilitate and strengthen the State-based system. New York State Senator Neil Breslin will provide us with an additional State perspective, and hopefully enlighten us as to what reforms and support Congress can reasonably expect from the State legislatures.

I appreciate that Julie Williams, First Senior Deputy Comptroller and Chief Counsel of the Office of the Comptroller of the Currency, has agreed to join us to provide us with her expertise on the optional Federal chartering system that governs the dual banking system. Hopefully we can draw some insight into the advan-

tages and disadvantages of this system from her experience. Ms. Williams will also give us an update on how the OCC is proceeding in its communication with the insurance regulators in developing bank insurance consumer protections as required by the Gramm-Leach-Bliley Act.

While I have asked Ms. Williams here to testify on her experience with the dual banking system and the OCC's ongoing coordination efforts with the NAIC, I would like to take this opportunity to express my grave concerns about the OCC's consideration of preempting State consumer protection laws. Many of these laws fall squarely within the consumer protections that Congress specifically safe-harbored in the Gramm-Leach-Bliley Act last year. Others are clearly the result of a past consensus among the affected parties with the strong support of the State legislatures.

I am not convinced that any of the State laws in question significantly interfere with the authorized powers of banks per se, although I am concerned about how they might be implemented over time. Congress pushed financial services reform through in part as a response to some questionable legal reinterpretations of the National Bank Act by past comptrollers.

I would hope that instead of embarking on another collision course with Congress, the OCC will work with the insurance regulators to develop an appropriate range of standards governing bank insurance activities. I think that the OCC has done an excellent job so far of working with the insurance regulators on other areas of the Gramm-Leach-Bliley Act, and I hope that this communication and cooperation could extend to consideration of the West Virginia and Massachusetts petitions.

I again thank Ms. Williams for agreeing to provide us with her insight on the dual banking regulatory system, and President Nichols and Senator Breslin for joining us today to talk about improving the efficiency of insurance regulation for all consumers.

That ends the statement of the Chair and I now recognize the ranking member, the gentleman from New York, Mr. Towns.

Mr. TOWNS. Let me thank you first, Mr. Chairman, for holding this important hearing. It is about time we put the interests of consumers first. It is also about time we recognize that the consumer is the one who suffers the most when regulations break down.

That National Association of Insurance Commissioners estimates that the average family may easily spend $3,000 each year for auto, home, life, and health insurance coverage. That family's only contact with the insurance company, however, may be the premium it pays periodically. Consumers have no way of knowing whether the insurance companies invest their premium dollars wisely or whether they are rogues, thieves, crooks. Consumers cannot hold companies accountable. Instead, they have to rely on regulators to perform this essential task to protect them.

We are here to find out whether regulators are, in fact, doing their job. If they are not doing their job, it is our job to find out why they are not doing their job. I don't think we will be successful in one hearing in terms of completing the assessment today, but as with any undertaking, a journey of a thousand miles starts with a single step.

Mr. Chairman, I look forward to hearing from the witnesses today and to working with you and the members of this committee on this very important matter to make certain that the consumers are protected, that the obligation that is our responsibility—and I am certain you agree with me that we will carry it out.

Mr. OXLEY. I thank the gentleman.

Are there further opening statements?

The gentleman from Illinois?

Mr. SHIMKUS. Just briefly, Mr. Chairman.

This is my first term on this subcommittee and one of the things I have learned is that it doesn't take you long to jump in the middle of issues. It didn't take long for Financial Services Modernization to get passed on the floor and here we are talking about insurance in the national scope, and probably appropriately so, as we start debating a lot of the different issues.

I have a good friend, Nat Shapo, who is the insurance commissioner from Illinois—who you have met with during the Financial Services Modernization debate. I just want to highlight the importance of what work is done by the State commissioners and the issue in Illinois and in my district. I would like to submit for the record two small articles from the State Journal-Register about a 21-year-old constituent of mine who was diagnosed with testicular cancer.

Like Lance Armstrong, the Tour de France winner—who is actually pedalling right now, I am sure—trying to recapture that, Travis Hopkins of Girard, Illinois is still fighting for his life. The insurance company wasn't going to pay for his treatment. He didn't have Lance Armstrong's endorsements and his ability to fight.

But it was Nat Shapo, the Illinois State Insurance Commissioner, who went to bat for him. Working with the company, he was able to get treatment for a constituent of mine. While it is still a tough battle, at least he is in the ring now trying to fight cancer.

My point is that as we examine what States are doing to achieve uniformity in insurance regulation and what Congress and State legislators need to do to help realize this goal, we need to be sensitive to the State governing bodies that assist citizens, like Travis Hopkins, on a daily basis.

As we juggle these issues, I will be looking at protecting the consumers and the consumer products, making sure there is safety and soundness, and also making sure that our citizens are being served.

With that, Mr. Chairman, I yield back my time.

[The prepared statement of Hon. John Shimkus and referenced articles follow:]

PREPARED STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Thank you, Mr. Chairman, for holding this hearing today to discuss the issues of improving insurance for consumers and increasing uniformity and efficiency in insurance regulation.

I would like to welcome and thank the distinguished panel for taking their time to be here this morning and for sharing their perspective with us.

This issue is important to me. Not long ago, there were two articles in the State Journal-Register about a 21-year-old constituent of mine who, like the Tour de France winner Lance Armstrong, is fighting testicular cancer. Armstrong beat the

disease before going on to win cycling's biggest race this summer. Travis Hopkins of Girard, Illinois, is still fighting for his life.

Unfortunately, Travis does not have Armstrong's considerable endorsements to fall back on to pay for the treatment he needs. Travis's insurance company also refused to pay for his treatments.

Recently, I talked to Nathaniel Shapo, head of the Illinois Department of Insurance and a good friend of mine. He found that there was a complaint file on the insurance company and decided to call the CEO himself. This resulted in the insurance company deciding to pay for Travis's $200,000 treatment.

My point is that, as we examine what the States are doing to achieve uniformity in insurance regulation and what Congress and State legislators need to do to help realize this goal, we need to be sensitive to these state governing bodies that assist citizens like Travis Hopkins on a daily basis.

I ask that I can submit the two newspaper articles for the record. Thank you, Mr. Chairman for yielding me time and again for holding this hearing. I yield back the balance of my time.

WHEN INSURANCE REJECTS TREATMENT

By Tony Cappasso, Staff Writer

Thomas Travis Hopkins is an ordinary guy.

He doesn't race bicycles, the way Tour de France winner Lance Armstrong does.

But Hopkins, a 21-year-old Girard resident, and Armstrong do have something in common—they both got testicular cancer. Armstrong beat the disease before going on to win cycling's biggest race this summer. Hopkins is still fighting for his life.

And just when he needs it the most, Hopkins' health insurance company is denying coverage for the only treatment that has a shot at curing him.

Called stem cell transplant, it's credited by Armstrong's doctors with saving his life, at a cost of around $200,000. Those same doctors are treating Travis Hopkins.

But Travis Hopkins doesn't have Armstrong's considerable endorsements to fall back on in order to pay for the treatment at Indiana University Hospital in Indianapolis.

Hopkins' insurance company, Fortis Health, has told him in no uncertain terms that it is not paying for a stem cell transplant to treat his testicular cancer. It told Indiana University Hospital, as well, according to copies of letters obtained from Hopkins' mother, Kathy.

"The diagnosis of germ cell tumor is not an approved diagnosis for an autologous peripheral stem cell transplant according to Mr. Hopkins' policy," the company informed the hospital on July 28. "No benefits are available for the transplant and related charges."

Company spokeswoman Cathy Quirk declined to comment.

"Since this involves patient confidentiality, we can't comment on the case," Quirk said.

Hopkins' nightmare began earlier this year, when he awoke one morning in pain, feeling too weak even to get out of bed.

Hopkins' adult life had barely begun. He had a job, installing cable for Greene County Cable, and had moved into his own apartment. He was never sick. But the pain and weakness convinced him something was wrong. He went to his doctor in Auburn.

"He examined me and sent me immediately to Memorial in Springfield," said Hopkins.

There, doctors took X-rays, performed lab tests. The test results were ominous. Something was growing in Hopkins' right testicle, the doctors told him, and it had to come out. No one said the word "cancer," but it was on everyone's mind.

Hopkins was worried but not especially scared.

"I figured they'll take it out and in a couple of weeks I'll go back to work," he said.

It didn't work out that way.

The following week, Hopkins and his parents got hit with both barrels of bad news. The growth in his testicle was cancer, in medical jargon choriocarcinoma, stage three.

At first, the reality didn't sink in, said Hopkins.

"I asked, 'What do we do?'" Hopkins said. "I didn't ask, 'What are my chances?'"

More tests and X-rays followed, yielding more bad news.

Hopkins' cancer specialist, Dr. Mary Bretscher of Springfield Clinic, spotted something on a chest X-ray. The cancer had spread.

Lab tests had revealed that Hopkins' cancer was growing fast. The doctors figured they'd gotten all of it out of his testicle and nearby tissue. They had to get it out of his chest. That meant more surgery.

First, though, he needed chemotherapy to shrink the tumor. Bretscher put him on chemo for 12 weeks.

"It was just like a big roller coaster ride," recalled Hopkins. "One day I'd be up, the next day I'd be down."

Hopkins' employers tried to help. When chemo left him too weak for his usual cable installation job, they found office work for him to do.

Eventually, though, the combined effects of cancer and chemo left him too weak even for that. Unable to work, out of money, Hopkins gave up his apartment and moved back into his parents' Girard home.

In late June, surgeons opened his chest and tried to remove the cancer. Tendrils of choriocarcinoma had spread into his left lung, coiled around his aorta and sent tentacles up into his shoulder and neck.

Despite surgery and chemo, Hopkins' cancer was not responding to treatment the way his doctors had hoped. But they still had one trick up their sleeves. Bretscher picked up the phone and called a colleague at Indiana University Hospital.

Dr. Lawrence Einhorn, distinguished professor of medicine at Indiana University School of Medicine, is one of the world's authorities on treatment of testicular cancer. He treated Armstrong with high-dose chemo followed by stem cell transplant. According to Hopkins, Einhorn told him he needs the same treatment. But the Hopkins family still has to come up with some way to pay for it.

Fortis' decision left Travis Hopkins and his parents in a bind. There's no way they or he can pony up tens or even hundreds of thousands of dollars for stem cell transplant therapy.

For now, doctors are treating Hopkins with chemotherapy. Each treatment kills cancer cells, but also knocks out his immune system for a week or so. Hopkins spent most of last week in Memorial Medical Center, recovering from an infection picked up after his last round of chemo.

Indiana University Hospital is considering a request that Hopkins be treated as a charity patient, said Kathy Hopkins. And the church the Hopkins family attends, First Christian in Girard, is raising funds on Travis' behalf.

It's a wonderful gesture and appreciated deeply, she said, but she resents the need for appeals to charity. Her son bought health insurance against just such an event. Now, when he needs it, the company has begged off.

"Fortis specifically targeted young adults in their advertising pitches," she claims.

Travis Hopkins' friends and neighbors are raising money to help him pay for cancer treatment. They've started a benefit account at the Girard branch of the First National Bank of Raymond. Donations may be mailed to The Benefit Account, First National Bank of Raymond, P.O. Box 78, Girard, 111. 62640. First National Bank of Raymond branches in Virden, Morrisonville, Pawnee and Raymond will also accept donations to the benefit account.

GIRARD MAN TO RECEIVE CANCER TREATMENT

INSURER DECIDES TO COVER PROCEDURE AFTER FLOOD OF NEGATIVE CALLS

By Tony Cappasso, Staff Writer

Travis Hopkins is in Indiana University Hospital in Indianapolis preparing for a stem cell transplant.

Fortis Health, Hopkins' health insurance company, changed its corporate mind last week about paying for the procedure.

How this turn of events came about is an object lesson on the influence wielded by politicians and bureaucrats, when they choose to exercise it.

Hopkins, 21, is a Girard resident. His plight was detailed in a State Journal-Register article last Sunday, which triggered an avalanche of telephone calls. Eventually, those calls made it into the office of Fortis chief executive officer Ben Cutler, who ultimately worked out the policy change.

Hopkins learned of the company's decision on Thursday, according to his mother, Kathy Hopkins.

"Mr. Cutler called me and told me the company was going to change the (insurance) contract," she said.

By all accounts, state Rep. Gwenn Klingler, R-Springfield, got things rolling after reading the account of Hopkins' troubles in The State Journal-Register. Klingler was traveling Friday and couldn't be reached for comment. But state Sen. Vince Demuzio, D-Carlinville, confirmed that she was on the phone to him early.

"She was very concerned about it," said Demuzio.

Demuzio agreed to contact U.S. Sen. Dick Durbin, D-Illinois, to see if there were any federal options for the youngster. Klingler, meanwhile, pursued the matter with the Illinois Department of Insurance.

On Monday, Klingler made the extent of her concern clear to Nathaniel Shapo, head of the Illinois Department of Insurance.

"I checked with our staff and found we had a (complaint) file open on the case," Shapo said.

After familiarizing himself with the facts, Shapo told his claims workers to pick up the pace in their negotiations with Fortis. On Wednesday, Shapo called Fortis CEO Cutler himself.

"He said this was a very difficult case, a very tough situation," recalled Shapo.

Cutler did not return repeated phone calls Friday requesting comment.

Shapo said Cutler emphasized that the company was within its legal rights in refusing to pay for stem cell transfer for Hopkins' testicular cancer.

"He said they did have 'specific contractual language,'" Shapo said.

The insurance policy spells out the types of illnesses for which Fortis will pay for treatment, and testicular cancer is not one of them, Cutler told Shapo.

But insurance executives don't take lightly phone calls from the head of the agency that regulates their business. Cutler said he'd review the denial and get back to Shapo.

In the meantime, Shapo fielded a phone call from U.S. Rep. John Shimkus, R-Collinsville, an old friend of Shapo's, who also agreed to push Fortis.

By Thursday, Cutler had worked out a compromise. The insurance company's contract with employees of Greene County Cable was changed to cover stem cell transplant as a treatment for testicular cancer.

Cutler himself called Kathy Hopkins late Thursday to let her know of the decision. He also called Indiana University Hospital to start the wheels rolling for Travis Hopkins' therapy. By nightfall, the Hopkinses were driving to Indianapolis.

Shapo praised Cutler for his handling of the affair.

"He was very responsive and very cooperative," said Shapo.

Starting next week, Travis Hopkins will get a round of high-dose chemotherapy, followed by an IV packed with his own stem cells, to help his immune system recover, said Indiana University Hospital transplant nurse Alison Morgan.

A week later, he'll get another round of high-dose chemo, then more stem cells, she said. After that, it's a waiting game to see if the treatment succeeded in killing off the cancer cells.

Based on past cases, Hopkins has a 60 percent chance of being cured of the illness, she said.

Mr. OXLEY. The gentleman yields back.

The gentleman from Minnesota?

Mr. LUTHER. Thank you very much, Mr. Chairman. I will be very brief.

I am glad that this committee is deliberating on this particular issue and looking at how we can improve the current regulatory framework that is, of course—as we all know—based on State oversight.

As my colleagues have already mentioned, I think it is important that the hearing not lead to a wholesale erosion of strong consumer protection measures at the State level that have been enacted there on behalf of citizens. In particular, my State of Minnesota has some of the best pro-consumer legislation in the entire country. I, of course, would not want to see those laws jeopardized by any action here in Washington.

I am particularly concerned by the recent OCC final privacy rule that exempts national banks from complying with Minnesota's privacy law when Section 505, better known as the Sarbanes Amendment of the Financial Services Modernization Act, specifically al-

lows States to enact stricter privacy laws that apply to financial institutions. I will be interested to hear how the OCC can justify its rule, given Section 505 of that Act.

Beyond that, I think we need to be very, very careful when it comes to taking away the authority of States and giving it to a Federal entity, unless it is accompanied by very strong protections on behalf of consumers.

So again, Mr. Chairman, thank you for holding the hearing and I look forward to the testimony.

Mr. OXLEY. The gentleman's time has expired.

Are there further opening statements?

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. TOM BLILEY, CHAIRMAN, COMMITTEE ON COMMERCE

Last November, this Congress made history by achieving something that no Congress in the previous 66 years had been able to accomplish—agreeing to comprehensive financial services modernization. The Gramm-Leach-Bliley Act was a critical first step towards uniformity in insurance regulation. It created a uniform licensing system for insurance agents and brokers. It established uniform redomestication provisions for mutual insurance companies. And it ensured a more uniform level playing field for insurance.

These were important steps to begin modernizing the regulation of insurance. But they are only first steps.

Now that we have successfully integrated the financial services marketplace, the floodgates of competition are about to open. Compared to other financial services providers, insurers have more expensive capital costs, higher transaction costs, and significantly lower rates of return on shareholder equity. It can also take insurers ten to twenty times as long as their competitors to get regulatory approval to bring new products to market. Under the current regulatory structure, insurers will have a hard time successfully, competing over the long haul in crossover markets. This harms the industry and harms consumers.

Particularly troubling is that over the last ten years, many insurers have suffered very poor returns on their insurance transactions, relying for their profitability on investment gains from surplus capital in the booming American economy. With insurers already 30% less profitable than other industries, if the economy slows down and insurers continue to be handicapped by their regulatory structure, capital will flow out of the system, resulting in more bankruptcies and even more industry consolidation.

Iowa Commissioner Terri Vaughan stated on behalf of the National Association of Insurance Commissioners that "passage of the Gramm-Leach-Bliley Act and our increasing interaction with Federal banking regulators means that State insurance regulators can no longer meet public expectations with outdated procedures that overly favor homestate autonomy at the expense of efficient interstate commerce." NAIC President George Nichols, who is testifying before us today, has stated that modernizing the State regulatory system is his top priority.

I am pleased to see that the State insurance commissioners are now active leaders in reforming the regulation of insurance. I fully support their efforts. They have committed to modernizing some of the Greatest inefficiencies in the system, including rate filings, market conduct examinations, and speed to market for new consumer products. If the commissioners achieve their goals, it may be the most significant set of reforms in the history of the NAIC.

However, I am concerned that if the commissioners goals are not achieved, pressure will continue to grow for an optional Federal insurance charter. While I do not at this time favor such an approach, I believe that the current system stifles innovation and competitive opportunities that could advantage consumers. One way or another, insurance regulation will be reformed.

I appreciate the willingness of our distinguished panel of witnesses to join us today to give us their perspectives on financial services regulation, as well as to update us on the implementation of the Gramm-Leach-Bliley Act, and I look forward to continue supporting their efforts at regulatory coordination and reform.

PREPARED STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, I want to thank you for holding this hearing on "Improving Insurance for Consumers." Had we given more attention to consumers in the debate on financial modernization legislation over the last few years, we might very well have avoided the need for this hearing altogether. But, despite efforts of this Committee, protecting consumers was never to become the guiding principle of last year's financial modernization legislation.

As a result, the problems plaguing insurance regulation today are fundamentally the same as those that have tormented consumers, the industry, regulators, and public officials for many years: muddled lines of regulatory responsibility; the absence of consistent standards and requirements; inadequate resources and enforcement; and open conflicts between regulators that, at times, have turned the federal regulator into nothing more than a "doorman" for the banking industry and have made state regulators despondent and overly cautious in their protection of consumers.

I honestly do not know what it will take to address the fundamental reforms needed in insurance regulation. We do know, however, that *nothing* really changes when we fail to deal with the fundamentals. Last year's financial modernization legislation has graphically demonstrated that, and this hearing is proof that is the case. Today, as in so many hearings before, we are joined by representatives of the Office of the Comptroller of the Currency (OCC) and of the state insurance commissioners, and why? Unfortunately, the answer to that question is simply that nothing has really changed to resolve their relationship in any positive and affirmative manner.

The OCC says it does not want to regulate insurance. It says insurance regulation is the responsibility of the states. Yet, the OCC continues to intervene at the behest of banks who want to prevent the states from applying tough consumer protections to bank insurance activities. In fact, the OCC is currently considering a request from the banks, which if approved, may be used by national banks in the States of West Virginia and Massachusetts to avoid complying with insurance consumer protections that must be honored by every other seller of insurance in those two states.

Banks have also secured protection in the OCC's final rule implementing the privacy provisions of last year's financial modernization legislation. In that recently issued rule, the OCC said that a bank does not have to comply with tougher privacy laws many states have adopted, if the bank sells insurance directly and not through a subsidiary. At least 16 states have adopted the National Association of Insurance Commissioners' (NAIC) model privacy law that says insurance information cannot be shared with anyone, affiliates or third parties, unless consumers give their affirmative permission. The OCC rule, on the other hand, lets insurance companies share information freely with affiliated entities and even lets them share information with third parties unless the consumer objects. The OCC rule, therefore, will deny privacy protections to consumers just because they buy insurance directly from a bank rather than from non-bank sources.

The OCC may say it does not want to regulate insurance; but make no mistake about it, it is regulating insurance. There is nothing "functional" about this kind of regulatory intervention, and it must stop in order for real insurance regulators to do the job that needs to be done.

The situation at the state level is also far from perfect. Resources committed to insurance regulation vary dramatically from state to state. And, there is a dangerous lack of coordination among state insurance regulators and between state insurance regulators and other financial regulators. These coordination problems are dramatically revealed by the insurance fraud case of Martin R. Frankel. In that case, several states knew or should have known a fraud was being committed but kept this information from other states.

Mr. Chairman, there can be no real doubt that insurance regulation continues to be in need of fundamental reform. For many of us, that need has been evident for a long time. However, I hope that as we embark on yet another attempt to address these problems, Members will prepare themselves for more than a Sunday afternoon "stroll-in-the-park." This is truly a dense woods into which few have ventured, and even fewer have emerged. My advice is: "Be Prepared" and "Follow Me."

Mr. Chairman, again, I thank you for holding this hearing, and I look forward to the testimony of the witnesses.

Mr. OXLEY. The Chair now turns to our distinguished panel, which I have already introduced. Welcome to all of you.

Mr. Nichols, we will begin with you.

STATEMENTS OF HON. GEORGE NICHOLS, COMMISSIONER, KENTUCKY DEPARTMENT OF INSURANCE; JULIE L. WILLIAMS, FIRST SENIOR DEPUTY COMPTROLLER AND CHIEF COUNSEL, OFFICE OF THE COMPTROLLER OF THE CURRENCY; AND HON. NEIL BRESLIN, SENATOR, STATE OF NEW YORK

Mr. NICHOLS. Thank you, Mr. Chairman. Good morning to the chairman and the members of the committee. It is a pleasure to be back before you. I am happy to be before you with a good message in terms of where insurance commissioners have come across the country.

Again, my name is George Nichols. I am the commissioner in the Commonwealth of Kentucky and president of the NAIC. I bring you greetings on behalf of all the insurance commissioners from across the country.

I want to take an opportunity to thank the Commerce Committee and its members for your efforts on H.R. 10 during the deliberations. You stood up for strong consumer protections as it related to the business of insurance. It is your work to preserve functional regulation in the State rule of insurance commissions that I believe was the impetus and the door-opener for us to develop our statement of intent and to also assure compliance with the Gramm-Leach-Bliley Act.

Second, I would like to thank you for holding this hearing. It gives us an opportunity to come before you and tell our story about what we have set out on what I consider to be a very ambitious path to create uniformity and efficiency for insurance regulation. It also gives us an opportunity to share with you the achievements to date, in a very, very short period of time since the passage of the Act.

There are three main points I want to touch on. First of all, we are currently on track to implement all provisions of the Gramm-Leach-Bliley Act that related to insurance regulation. Second, we have taken the bold step to spearhead national initiatives that go far beyond those minimum requirements set in the Gramm-Leach-Bliley Act that I want to share with you.

We believe that they satisfy the larger goals that will create the appropriate uniformity and efficiency in the system that we think are necessary that will alleviate any desires to have insurance regulated at the Federal level. It is an approach that is based in looking at where it is appropriate that we have national standards and national approaches to insurance regulations, but not take away the independent jurisdiction to address the specific consumer needs for people in Illinois, people in Ohio, Kentucky, and any other State in the country.

Third, we think that in these larger goals that we want to achieve, it will require a partnership, a partnership that is made up of insurance regulators, of State legislators and Governors, Federal counterparts, Congress, consumers, and insurers.

Our No. 1 priority is to protect consumers. We recognize the financial impact of buying insurance. We understand that when it is used they feel vulnerable. And we also recognize that oftentimes

in the subjective areas of insurance coverage it will require good, strong, and balanced regulation to make sure that consumers are adequately protected.

In 1998, we had over 12,500 individuals across the country that worked to preserve insurance regulation to protect consumers. We have spent some $853 million on a yearly basis in terms of budgets to provide strong regulation for insurance consumers.

The Gramm-Leach-Bliley Act mandates three primary functions for us that we were to address. First was to coordinate and cooperate with Federal regulators. I am happy to announce that we have been working for a long time in working with the Federal regulators—our Federal counterparts—and since the passage of the bill there have been numerous meetings we have had to attempt to coordinate our efforts. There are areas in which I think we need to continue to improve in terms of that coordination. However, I have found a commitment on the part of all our counterparts at the Federal level to work clearly with the NAIC and State insurance commissioners across the country.

We have been working closely to develop information sharing agreements in terms of the OTS, which we already have a formal agreement that is being signed by the States. We are developing one with the OCC which I am sure Julie will be mentioning later. We are working on one with the Federal Reserve and the OTS. So we believe that we are well on our way to developing that relationship not only in a formal setting but an informal setting as well.

Second was to address the issue of privacy rules as it relates to insurance. As you may know, in 1980 we had a model act that was passed related to the protection of privacy information for all insurance. Some 17 States across the country have now passed a privacy provision related to the 1980 model that goes far beyond any of the protections provided to any set of consumers related to the Gramm-Leach-Bliley Act.

We have also worked in 1998 to pass a model privacy rule related to health information. As we had focused on this initiative since the passage of the bill, we have primarily focused to develop financial-related privacy rules for insurance similar to the regulations completed by our Federal counterparts. We also felt it was important to separate the issue of health insurance information from financial information because of the overall impact and private nature of that information that is being shared.

The third area that we were to focus on was the establishment of a national licensing system for agents and brokers to avoid the establishment of NARAB. I am happy to announce that as of today we have had three States that have passed a producer model act that addresses the issue of setting out uniform procedures and reciprocity to comply with the provisions of the Gramm-Leach-Bliley Act. Kentucky was fortunate enough to be the first State to produce a producer model act to comply with those provisions. Three States now have done so and we have 31 States scheduled to propose the legislation in their sessions in the upcoming year.

We have also publicly stated—and it is also in my written testimony—that we believe we should go further than the minimum standards set in the Gramm-Leach-Bliley Act. Without full and complete, appropriate rule across the country in all 50 States and

the District of Columbia, we think we would be doing an injustice to the insurance industry. So we are now working to assure that that is in full compliance across the country.

Additionally, we have gone much further than you had requested us to do in the legislation. In my role as president, my platform was established to modernize insurance regulation. We developed a statement of intent—which you have a copy of—and it was passed at our March meeting in Chicago. You will also note that it is signed individually by each State and the District of Columbia. Our purpose was to personally and jointly commit our goals of achieving national uniform standards for insurance regulation.

We recognize the importance of working with legislators and Governors in this initiative. We feel that we have been able to establish the rapport and the support from those bodies in terms of the initiative we have set forth. I want to share with you the areas in which we have gone further than the Gramm-Leach-Bliley Act.

One is speed to market, developing a system whereby we can review and approve products that will be delivered to consumers in the most expedient manner possible and done in the most efficient manner across the country, where appropriate. We continue to support the commercialized deregulation among the States, which would reduce many of the regulatory burdens that employers are having to deal with as it relates to insurance policies.

Third, the development of a national treatment of insurance companies whereby we could establish a national licensing process for companies whereby they would actually deal with a single regulatory body, whether it be a group of States or some other entity, that would allow them to get licenses in a much easier fashion. We have already worked—related to the speed to market products and the national treatment—on developing electronic initiatives, one being that form filings could be filed electronically and the other to be a unified, uniform application process for licensing of insurance companies. Our goal is to have all 50 States up on the electronic format and uniform application for company licenses by the end of the year.

We also are developing the appropriate tools necessary to facilitate electronic commerce among insurance companies, agents, and the consumers, all with the goal to make sure that the appropriate protections are there for consumers in an electronic environment.

And last but not least, we have begun to take the necessary steps to develop what we believe will be an appropriate mechanism for market conduct. If we are able to achieve efficiency and uniformity across the country and fail to put in the appropriate standards and tools necessary to protect consumers in a market conduct approach—similar to what we have done with the financial solvency—then we would have failed in our initiatives.

We have put forth a great number of efforts. During the debate of H.R. 10, we came to Congress and asked for additional things, things that we would like for Congress to consider in assisting the commissioners in carrying out our job. One, as we move to develop a unified national system for agent licensing, we would like to have access to the National Criminal Information Data base. If we are to protect consumers related to agents, it is important that we have access to the information that will allow us to determine if we have

bad apples—criminals or others—who have taken actions that would not be in the best interest of consumers.

Second, we would like to see the granting of Federal immunity and liability for the NAIC and the State insurance departments as we relate to transferring information with our Federal regulators. There is a likelihood that the current laws are broad enough to protect those relationships between Federal regulators and State insurance commissioners. However, the national data bases that we have created and we at the State departments depend on, is established at the NAIC level. In order for us to continue to do that job, we believe that the NAIC should have the same protections as we do as we work with our Federal counterparts.

In conclusion, I want to share with you that I firmly believe that we have worked very hard to achieve the objectives and the overall goals of the Gramm-Leach-Bliley Act and we have shown our commitment to the insurance world to go further than the what the Gramm-Leach-Bliley Act established for us. The insurance commissioners—all 50 of them and the District of Columbia—are very focused, very committed, and have shown their commitment in how we have coordinated our efforts in making sure that we meet the minimum requirements.

We are prepared in our September meeting to outline not only our overall goals but the time lines and milestones to achieve those. One of the things I think is important to note is that in this new era in which we are committed to improving the uniformity and efficiency of insurance regulation, we have committed that every option will be considered as we move forward. And in those options, it includes laws being passed by the States individually, an interstate compact, and lo and behold we even considered coming to Congress and asking for assistance if that is what we felt was necessary to make sure that we could maintain insurance regulation closest to the consumer at the State level, but assure the appropriate uniformity across the country.

Thank you, sir, for allowing me to be here this morning.

[The prepared statement of Hon. George Nichols follows:]

PREPARED STATEMENT OF HON. GEORGE NICHOLS, COMMISSIONER, KENTUCKY DEPARTMENT OF INSURANCE ON BEHALF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Introduction

My name is George Nichols. I am the Commissioner of Insurance in Kentucky, and this year, I am serving as President of the National Association of Insurance Commissioners (NAIC). This is a particularly challenging time as we work to improve State insurance supervision to better meet the demands of consumers and a global insurance industry.

Let me start by thanking the Commerce Committee and its Members for the important work you did in preserving the role of State insurance supervision during Congressional consideration of HR 10. Although HR 10 was originally intended to modernize Federal banking and securities laws, its negative side impact on State laws governing the solvency and market conduct of insurance providers could have been devastating. Your insistence that HR 10 be amended to fully protect insurance consumers was a critical step in opening the door for State regulators to meet and exceed the financial modernization goals of the Gramm-Leach-Bliley Act (GLBA).

Today, I would like to make three points regarding the response of State insurance regulators to financial modernization and the Gramm-Leach-Bliley Act—

- First, the NAIC and State insurance regulators are currently on track to implement all provisions of GLBA as intended by Congress.

- Second, the NAIC is spearheading a bold set of national initiatives that will move State insurance regulation far beyond the minimum requirements of GLBA in order to satisfy larger goals of regulatory uniformity and efficiency.
- Third, meeting the requirements of GLBA and the larger goals of regulatory uniformity will demand prompt action by several interested groups in addition to State insurance regulators, including State legislators and governors, Congress, and insurance industry participants.

Protecting Consumers is the First Priority of State Insurance Regulation

Paying for insurance products is one of the largest consumer expenditures of any kind for most Americans. Figures compiled by the NAIC show that an average family can easily spend a combined total of $3,000 each year for auto, home, life, and health insurance coverage. This substantial expenditure—often required by law or business practice—is typically much higher for families with several members, more than one car, or additional property to insure. Consumers clearly have an enormous financial and emotional stake in making sure that the promises made by insurance providers are kept.

Protecting American insurance consumers in a world of hybrid institutions and products must start with a basic understanding that insurance is a different business than banking and securities. Insurance is a commercial product based upon subjective coverage decisions, subjective product pricing, subjective claims determinations, and subjective figuring of claims payment amounts. All of these business subjectives add up to one big certainty—Insurance products can generate a high level of consumer backlash and customer dissatisfaction that requires a high level of regulatory resources and responsiveness.

As regulators of insurance, State governments are responsible for making sure the expectations of American consumers—including those who are elderly or low-income—are met regarding financial safety and fair treatment by insurance providers. State insurance commissioners are the public officials who are appointed or elected to perform this consumer protection function. Nationwide in 1998, we employed 12,500 regulatory personnel and spent $853 million to be the watchful eyes and helping hands on consumer insurance problems. State insurance departments presently handle approximately four million consumer complaints and inquiries each year.

The States also maintain a system of financial guarantee funds that cover personal losses of consumers in the event of an insurer insolvency. The costs of this financial guarantee system are borne entirely at the State level, with no assistance from the Federal government.

State Insurance Regulators Are Strongly Committed to Implementing GLBA

The Gramm-Leach-Bliley Act establishes a new order of functional financial regulation that will depend upon the active cooperation of many Federal and State agencies to be effective. Although this approach is novel at the national level, it is well known among State insurance regulators who have been working together cooperatively for more than a century. We have found from experience that organized cooperation through the NAIC produces strong supervision results overall, yet we are also know that extraordinary effort, hard work, and constant attention are needed to achieve such results.

The regulatory framework established by GLBA designates the States as the appropriate functional regulators of insurance products in the United States, including those provided by Federally-supervised banking and securities firms. This most recent Federal statutory affirmation of State insurance authority is wise because it recognizes our successful record over the years in meeting the special consumer protection requirements of insurance products. For example, all 50 commissioners joined together to end the use of race-based insurance premiums and obtain rightfully-owed insurance payments for victims of the Holocaust.

In addition to recognizing general State authority over insurance, GLBA mandates specific State regulatory action in three areas—

a) Coordinating and cooperating with Federal functional regulatory agencies for banks and securities firms;
b) Issuing privacy rules to protect the non-public financial information given by consumers to insurance providers; and
c) Establishing a national licensing system for insurance agents and brokers in order to avoid the creation of the National Association of Registered Agents and Brokers (NARAB).

Working through the NAIC, State insurance departments are strongly committed to implementing all requirements of GLBA promptly. Furthermore, State regulators are committed to uniform insurance regulation by eradicating outdated procedures

that overly favor home-state autonomy at the expense of efficient interstate commerce. Our ultimate goal of a national regulatory system based upon existing State authority goes well beyond the requirements of GLBA.

Going Beyond GLBA—NAIC's Regulatory Modernization Program

I was elected President of NAIC in December 1999, just one month after GLBA was signed into law. My first action as President was to announce that modernizing the State regulatory system would be my top priority for NAIC during the year 2000. To achieve this goal, I immediately began working with my fellow commissioners to develop a plan that will get us there.

The critical first step was the acknowledgement of insurance commissioners in every State that common progress cannot occur without common agreement on our objectives. To that end, we began collectively drafting a regulatory modernization mission statement. After careful discussions, the commissioners from each of the 50 States and the District of Columbia individually signed a document entitled "Statement of Intent: The Future of Insurance Regulation" (Attachment One). A copy is appended to the end of my testimony.

The insurance commissioners' Statement of Intent is a major breakthrough toward regulatory modernization. We are personally and jointly committed to achieving the same specific objectives on a set schedule. These are now the shared goal of insurance commissioners throughout the United States.

The Statement of Intent sets forth the following mission objectives—

- Working with our governors and State legislatures, we will undertake a thorough review of our respective laws and regulations to determine needed changes that accomplish functional regulation as contemplated by the Gramm-Leach-Bliley Act.
- We are committed to streamlined licensing for producers, and will work to implement effective uniform licensing standards.
- Building on initiatives already underway, we will review our financial reporting, analysis, and examination processes to address market changes that demand consideration of the national and international impact of insurance industry operations.
- We will continue to use the NAIC process to develop and implement effective regulatory cooperation agreements with other Federal and State regulatory agencies regarding the sharing of financial monitoring and enforcement information.
- Working with our governors and State legislatures, we will take steps to improve the speed to market for new insurance products.
- We will evaluate the experience of specific States with regard to reforming the system of rate forms and filings for certain insurance lines in order to achieve greater uniformity and eliminate unnecessary requirements.
- We will review the current focus, structure, and implementation of market conduct programs to determine the merits of voluntary uniform national standards as a basis for market conduct examinations and enforcement that will protect local consumers.
- We have endorsed the Uniform Electronic Transactions Act (UETA), and will continue to identify necessary reforms that will facilitate e-commerce while maintaining important consumer protections.
- We are committed to exploring all options that could offer greater uniformity within the State-based system of insurance regulation, and we will explore the development of a proposal for a State-based system that could provide the same efficiencies as a Federal charter for insurance companies.

Insurance Regulators Are on Schedule to Meet All Modernization Objectives

Prior to final approval of the commissioners' Statement of Intent in March, the NAIC began a series of actions to implement GLBA requirements and lay the groundwork for larger improvements. The implementation schedule set by Congress for certain parts of GLBA is quite tight for Federal and State regulators, especially the provisions that will require State legislative action. The NAIC and its members have approached this implementation effort with urgency and determination, and have committed to meet the same deadlines as Federal agencies even where GLBA does not require us to do so.

In December 1999, I sent letters to the heads of all Federal functional regulatory agencies seeking to meet with them in order to establish a process for cooperation. At mid-July, I can report that I have met personally with the Comptroller of the Currency (OCC), the Director of the Office of Thrift Supervision (OTS), and Governor Laurence Meyer who oversees insurance matters for the Federal Reserve Board. The NAIC and several State regulators have also met with officials at the Federal Deposit Insurance Corporation (FDIC). These meetings and communications

have been very successful in getting the process of cooperative functional regulation off to a good start.

Within NAIC, we created nine special working groups and assigned them particular tasks to accomplish the GLBA mandates and mission objectives in our Statement of Intent. The activities of these working groups have dominated our time and attention at NAIC since then.

As a result of exceptional efforts, the NAIC and State insurance regulators are on target to meet the objectives set by GLBA and our Statement of Intent. We have a lot of work yet to do, but we are well on the way to attaining our goal. Furthermore, I am confident that State insurance regulators will continue to do whatever it takes to get the job done right.

Cooperating with Federal Regulators under GLBA

Establishing sound working relationships with Federal regulators is absolutely essential for State insurance departments under GLBA. In fact, it is so important that NAIC was actively engaged in meeting with our Federal counterparts more than a year before GLBA became law. After enactment of GLBA, we decided to consolidate our efforts under a new Coordinating with Federal Regulators Working Group given broad responsibility to stimulate cooperation at all levels.

There are two basic ingredients for making regulatory cooperation a success. The first is negotiating and signing written agreements between Federal and State agencies that lay out the ground rules for sharing information and keeping it confidential when necessary. The second is establishing personal contacts at other agencies to promote mutual understanding, education, and practical cooperation on monitoring and enforcement matters.

The NAIC is currently involved in achieving acceptable written cooperation agreements with the Federal Reserve, OCC, OTS, and FDIC. We are farthest along with OTS and OCC. Our model consumer complaint sharing agreement with OCC has been signed by 28 State insurance departments, and our broad information sharing agreement with OTS has been signed by 21 States to date. While we continue to encourage State departments to sign these existing model agreements, we are simultaneously working to improve all cooperation agreements with Federal agencies to better reflect the final provisions in GLBA.

The process of establishing personal working contacts between State and Federal regulators is also going very well. Attached to my testimony is a chart summarizing the most important meetings held by NAIC so far (Attachment Two), however there have been many additional contacts with Federal regulators through the NAIC and directly with State department personnel. Generally, these are high-level meetings that have focused on exchanging information and viewpoints regarding regulatory jurisdiction, supervision methods, and specific cases such as the Citigroup merger. Federal banking agencies have also started sending regular attendees to NAIC national meetings held four times each year, which is an excellent way for them to meet State regulatory staff and observe how we make our policy decisions.

NAIC has an extensive schedule of insurance supervision training classes and materials which we have made available to Federal regulators. In exchange, Federal agencies are beginning to open their training programs to State insurance regulators. Taking part in these classes develops professional expertise in other financial industries and facilitates the process of making personal contacts.

Meeting GLBA Consumer Privacy Requirements

The Title V consumer privacy requirements in GLBA create a quandary for State insurance regulators. Section 501 of GLBA directs us to implement the same privacy rules for consumer financial information as those prescribed by Federal agencies, while Section 507 permits States to implement stronger privacy standards. This dual charge sets up a conflict between what State insurance authorities MUST do under GLBA and what States MAY do regarding consumer privacy. In neither case does it appear that Congress gave full consideration to the privacy needs of insurance consumers, as opposed to consumers of other financial products.

Protecting the privacy of insurance consumers is an important area where NAIC is 20 years ahead of Congress. NAIC issued a consumer privacy model law in 1980 that gives insurance consumers far greater privacy rights than those in GLBA. Our records indicate that 17 States have adopted all or part of the NAIC model. In those States, consumers are presently enjoying a high level of privacy protection, and insurance providers are complying without problems as far as we know. We believe State laws based on the NAIC model exceed GLBA, which means they will remain in force under Section 507 of GLBA.

NAIC issued a newer model law in 1998 to protect the privacy of consumer health information. While offering protections similar to the 1981 model, this newer model

is specifically tailored for States wishing to focus on health information. We expect this model will receive consideration as legislators have more time to consider the model or public attention becomes more focused on keeping personal health information under the control of consumers.

In addition to these existing models, the NAIC's Privacy Issues Working Group is moving swiftly to construct model insurance consumer privacy regulations intended to serve as guidance for States not presently having privacy regulations that satisfy Title V of GLBA. The purpose of these interim regulations is to help State insurance authorities comply with the minimum requirements of GLBA quickly and give essential interim guidance to insurers. In addition, the NAIC will consider how to achieve stronger privacy protections across-the-board for all consumers of financial services, including insurance.

The Working Group started in February by requesting public comments from interested parties regarding how NAIC should implement the privacy provisions in GLBA. After evaluating many comment letters and hearing public witnesses at NAIC meetings in March, May, and June, the Working Group circulated a draft of proposed regulations that mirror the Federal GLBA privacy rules as much as possible, while addressing specific insurance issues such as medical information. Additional public comments are still being received, and the Working Group will consider these at the next NAIC meeting scheduled for late August.

Although final GLBA privacy rules are not completed, by unanimous vote all 51 commissioners endorsed making the date for enforcing State insurance privacy rules under GLBA the same as the July 1, 2001 date set in the Federal rules. We hope to finish the NAIC's model GLBA rules at our national meeting in September.

Satisfying NARAB—Starting with Reciprocity and Moving toward Uniformity

The message from NARAB is clear: fix and make more uniform the system for agent licensing. That is what we are doing. We wholeheartedly support the licensing goals endorsed by Congress in NARAB. We do not, however, support the creation of NARAB itself as a separate organization. NARAB would cast a cloud of uncertainty over the legal authority of State insurance departments to protect consumers throughout the United States. If NARAB were to prevent States from exercising their full range of powers to regulate insurance for the benefit of consumers, there would be nobody to perform this vital function.

Prior to passage of GLBA, the NAIC was working on an improved Producer Licensing Model Act that would promote uniformity and efficiency among the States. We moved quickly to amend this model legislation to comply fully with the NARAB provisions in GLBA when they became final. The revised version of the Producer Licensing Model Act was completed in February 2000 in order to make it available in time for consideration by several State legislatures which were just beginning their sessions. At this point, three States—Kentucky, New Hampshire, and Missouri—have enacted the model, two States have a bill pending, and 31 States are expected to introduce the bill during their next session in 2001.

The NAIC's Producer Licensing Model Act is the primary vehicle for States to satisfy the statutory requirements of GLBA because it fully implements the requirements for licensing reciprocity among States. Adoption of the Model Act by a majority of States will assure full compliance with the NARAB provisions by November 2002.

Adoption and implementation of this model law, however, does much more than simply satisfy the minimum requirements of GLBA. It provides for significant uniformity in licensing and goes a long way toward achieving our ultimate goal of uniformity among the States in agent licensing. Although our immediate goal is minimum compliance with GLBA, our ultimate goal is for all 50 States to be operating under a national system of unified standards and procedures.

The NAIC expects that States will meet and exceed the NARAB provisions in GLBA within the three-year time allotted by the statute. We plan to accomplish this goal by making necessary changes to the existing system of State insurance supervision so that NARAB will never be created as a separate organization. This approach will satisfy the objectives of NARAB sponsors who want to see State regulation improved without additional Federal action.

The NAIC is taking several additional steps to improve agent licensing. In partnership with the National Insurance Producer Registry (NIPR), a non-profit affiliate of the NAIC, we have been aggressively investing over the past three years in modernizing our technical infrastructure to develop a more centralized producer licensing processing center. At present, the NAIC maintains a regulatory network and centralized database of 2.6 million of the Nation's 3 million producers. This information is available to regulators and insurance companies over the Internet, and is updated daily by automated processes at the State insurance departments.

Currently, 32 States are online with the Producer Database and the target is to have all 50 States contributing to PDB between December 2000 and June 2001. Because PDB is a mirror of the State licensing database, NIPR is creating a single system to automatically process appointments, terminations, and uniform non-resident license applications on behalf of individual State insurance departments against data in PDB within 24 hours of receiving the electronic data from an insurance company or producer. Approximately 110,000 producer appointments and terminations are being processed by 24 States through NIPR monthly right now, and we expect to have all 50 States participating in 2001.

The next key step in this process will be the implementation of a single electronic licensing application. These system improvements will bring about regulatory efficiencies that far exceed the expectations in NARAB and set the stage for uniformity.

State Regulators Need Help from Others to Comply with NARAB

The key to State compliance with the NARAB provisions in GLBA is adoption of the NAIC's Producer Licensing Model Act by a large majority of States. As regulators, we have started the process at the NAIC by developing the Model Act and revising it to meet the requirements of GLBA.

The next step will be for State legislatures and governors to consider the Producer Licensing Model Act, and hopefully adopt it without substantial changes. NAIC members will be urging our legislators and governors to act as quickly as possible because the clock is ticking toward the November 2002 deadline for State compliance with NARAB provisions.

NAIC officers and members have also been reaching out to insurance industry trade groups and companies to seek their support for adopting the Producer Licensing Model Act in each State. Industry representatives are active and influential in State government affairs. Having them join with regulatory officials in pushing the Model Act would be very helpful to getting it enacted into law.

Many industry groups participated in drafting the modernization reforms contained in the Model Act. These include: Council of Insurance Agents and Brokers, National Association of Insurance Financial Advisors, Independent Insurance Agents of America, Professional Insurance Agents, National Association of Professional Surplus Lines Offices, Consumer Credit Insurance Association, National Association of Life Companies, American Council of Life Insurers, Alliance of American Insurers, American Bankers Association Insurance Group, Association of Banks in Insurance, National Association of Independent Insurers, and the American Insurance Association.

Some commercial firms have complained to Congress and others that State regulation needs to be modernized. We hope industry representatives will actively support the modernization efforts which are now the top priority of the NAIC and State insurance regulators. Now is the time for all of us to replace words with actions.

There is also a role for the Congress with respect to giving NAIC access to NCIC, which I will discuss later.

NAIC Initiatives Go Beyond Federal Requirements

There are three key NAIC program initiatives in our regulatory modernization plan that go far beyond the requirements in GLBA and other Federal laws. To make them happen, NAIC has created special working groups, whose activities are described below—

NATIONAL TREATMENT OF INSURANCE COMPANIES

The National Treatment of Companies Working Group is responsible for identifying regulatory procedures that will treat eligible insurance companies the same across the Nation. Already, 29 states are participating in the NAIC's Uniform Certificate of Authority Application (UCAA), and one more is in transition. The Working Group's goal is to encourage all 50 states and the District of Columbia to use the UCAA by December 2000.

Another goal is standardizing the licensing review process. While the UCAA provides a uniform application, the Working Group is looking to expand this effort to also include standardized review criteria nationwide. We also plan to develop a streamlined operating structure that would give certain companies "national treatment", including regulatory procedures related to solvency monitoring, holding company supervision, approval of mergers and acquisitions, market conduct reviews, and corporate re-organizations. A draft model to accomplish this goal is currently underway, and will be discussed during the Working Group's next meetings in August and September.

The importance of this national effort is set forth in our Statement of Intent—

"We are committed to exploring all options that could offer greater uniformity within the state-based system of insurance regulation.

"An initial step toward this streamlined system is already available through the Accelerated Licensure Evaluation and Review Techniques (ALERT) program, which is a streamlined insurer licensing procedure. We will encourage all states to join ALERT and initiate use of the newly developed expansion application process. This will allow streamlined admissions for those companies already admitted in one ALERT state simply through the filing of an expansion application in another ALERT state. The expansion application process introduces elements of reciprocal reliance on the more detailed work of the state reviewing the complete application. We will pursue development of an e-repository for company applications to facilitate one-stop filing.

"In addition, we will evaluate the broad range of regulatory issues and concerns and develop a proposal for a state-based system that could provide the same efficiencies as a federal charter for insurance companies."

SPEED-TO-MARKET

The Speed-to-Market Working Group is responsible for identifying one-stop product filing procedures and a more efficient product approval process. The Working Group is considering domestic regulatory approval in conjunction with some form of oversight or the formation of a single-source entity that is charged with filing review. They are considering a centralized electronic filing repository as a key objective, and have discussed methods for implementing long-range speed-to-market plans. Still on the table are development of an interstate compact and reciprocal agreements.

There is widespread support among the States to pass legislation regarding commercial lines de-regulation. Just as we revised our producer licensing model law to respond to NARAB, we will similarly revisit our rate and form filing procedures to assure they promote true speed to market.

Much progress has already been made on speed-to-market through the NAIC's System for Electronic Rate and Form Filing (SERFF) program. SERFF is an electronic process for insurers to file required rates and policy forms with State regulators. The current monthly total of such filings is 300 to 400, which has been increasing steadily since the beginning of this year. There are 34 States approved for SERFF, with 20 of those States currently active in receiving and reviewing SERFF filings. Of the 287 companies eligible, about 150 are active in making SERFF filings.

Version 2.0 of SERFF is set to roll-out around Labor Day. It offers the advantage of being available through the Internet, and will provide many enhancements such as improvements in multi-state filing and a more user-friendly interface. Version 2.0 should greatly boost interest in SERFF and rapidly increase the numbers of licenses, active participants, and electronic filings transmitted.

MARKET CONDUCT ISSUES

Along with solvency, consumer protection is the hallmark of the State insurance regulatory system. Our goal is to address national market conduct to make it as strong as our coordinated solvency monitoring system. The Market Conduct Issues Working Group is responsible for streamlining regulatory procedures dealing with coordination or duplication, uniform procedures, philosophy, focus of examinations, self-audits and assessments, training, costs, and uniform legal standards. Streamlining insurance supervision is a top priority, but assuring consumers of fair treatment in the marketplace will always be our highest priority.

Congress Can Help Improve State Regulation

Improvements in several Federal laws affecting State insurance regulation would help give us all the tools we need to meet the challenges of the modern marketplace. During Congressional consideration of GLBA, the NAIC suggested several amendments to Federal laws that would be useful.

The primary benefit of making the following changes to Federal laws is to achieve uniform regulatory procedures and national enforcement quickly by using the existing system of State regulation. The NAIC proposes that Congress—

- Provide State insurance regulators with access to the national criminal information database (NCIC) through the NAIC or its affiliates for regulatory purposes and for checking criminal histories as required by the Federal Insurance Fraud Prevention Act. (18 USC 1033)
- Grant Federal immunity from liability for NAIC and NIPR database activities related to creating a national licensing and enforcement system.

- Protect the confidentiality of regulatory communications among NAIC, State regulators, and Federal agencies.

NAIC and its members will be pleased to provide additional information and assist Congress in adopting Federal legislation to achieve these goals.

Conclusion—State Regulators Are Meeting the Challenge of Modernization

The NAIC and State insurance regulators are well on the way to implementing the provisions of GLBA as intended by Congress. More importantly, we are also well on the way to doing far more than Congress or industry representatives have asked us to do regarding uniformity, efficiency, and modernization. We will need help from other State officials, industry, and Congress to complete the job expected by consumers, policyholders, and claimants as we begin the 21st century.

We look forward to working with Congress and other interested parties as State insurance regulators continue to develop and implement our modernization programs.

ATTACHMENT ONE

STATEMENT OF INTENT: THE FUTURE OF INSURANCE REGULATION

Our primary goal is to protect insurance consumers, which we must do proactively and aggressively. We also recognize that consumers as well as companies are well served by efficient, market-oriented regulation of the business of insurance.

Insurance is unique in the world of financial services. Historically, insurance markets have developed from state to state reflecting the differences in population, geography, weather patterns and delivery systems. State regulation has addressed that marketplace efficiently and effectively.

Fueled by enhanced technology and globalization, the world financial markets are undergoing rapid changes. In order to protect and serve more sophisticated but also more exposed insurance consumers of the future, insurance regulators are committed to modernize insurance regulation to meet the realities of an increasingly dynamic, and internationally competitive financial services marketplace. This will include working with all parties to combat and reduce the incidence of fraud, thereby providing a safer environment for consumers and lower costs.

We pledge to work cooperatively with all our partners—governors, state legislators, federal officials, consumers, companies, agents and other interested parties—to facilitate and enhance this new and evolving marketplace as we begin the 21st Century.

I. IMPLEMENTING THE GRAMM-LEACH-BLILEY ACT

Proposed Amendments of State Laws

Working with our governors and state legislators, we will undertake a thorough review of our respective state laws to determine needed regulatory or statutory changes to achieve functional regulation as contemplated by the Gramm-Leach-Bliley Act. Anti-affiliation statutes, licensure laws, demutualization statutes, and various essential consumer protections, including sales and privacy provisions, will be part of this review. We will move forward quickly to both promulgate regulations and suggest statutory changes to facilitate implementation of the new law.

Streamlined Licensing for Producers

We are committed to uniformity in producer licensing and will work to implement effective uniform producer licensing standards. As a necessary interim step, the NAIC adopted the Producer Licensing Model Act for consideration by state legislatures. This Model Act provides specific multi-state reciprocity provisions to comply with the requirements of the Gramm-Leach-Bliley Act.

While reciprocity is a short-term answer, uniformity is the efficient, long-term solution. As a result, we have empowered the NAIC's non-profit affiliate Insurance Regulatory Information Network (IRIN) to develop recommendations for a streamlined, national producer licensing process that will reduce the cost and complexity of regulatory compliance related to the current multi-state process. We believe that by leveraging work already done on the Producer Database and the Producer Information Network and by using IRIN as a central clearinghouse for non-resident licensing information, efficiencies will be realized that exceed expectations outlined in the National Association of Registered Agents and Brokers (NARAB) provisions of the Gramm-Leach-Bliley Act.

Financial Examinations and Reviews of National Companies

We will consider the implications of the Gramm-Leach-Bliley Act on the regulatory authority, focus, and procedures provided by the NAIC Insurance Holding

Company System Model Act and accompanying Model Regulation and will recommend changes for consistency with the functional regulatory scheme set forth in the Gramm-Leach-Bliley Act and related federal regulations.

Building on initiatives already underway, we will review our financial reporting and financial analysis and examination processes in light of the new law and changes occurring in the market place. We will refine our risk-based approach to examining the insurance operations of financial holding companies to place greater emphasis on a company's unique risk exposures and how it manages those risks.

We will recommend mechanisms to enhance communication and coordination among all functional regulators, and we will review the role of the NAIC resources in supporting such communication and coordination.

We will pursue development of a group-wide approach to regulating insurer groups and enhancing coordination among states. As a part of this initiative, we will consider consolidated financial statements for the insurance operations of groups.

Implementing Functional Regulation and Sharing Regulatory Information

We will continue to use the NAIC process for the development of model agreements, and we will build on our progress to date. We will actively encourage the execution of information sharing agreements between the individual states and each of the key federal functional regulators.

In addition, we will develop a comprehensive agreement for the sharing of information among states.

The NAIC adoption of the model confidentiality law provisions demonstrates its commitment to break down barriers to sharing information between the States. We will work with state legislators to support such confidentiality legislation. We will pledge to form coalitions with interested parties to promote uniform and consistent enactment of the confidentiality provisions.

II. YEAR 2000 NATIONAL REGULATORY PRIORITIES

"Speed to Market"

Working with our governors and state legislators, we will take steps to improve speed to market for insurance products. This will include development and implementation of a system of deference to the state of domicile using one-stop filing for products issued on a multi-state basis, where appropriate. To support this system, we will develop and implement state-based uniform standards for policy form and rate filings for appropriate product lines. In pursuing this evaluation, we will keep in mind the need for flexibility to allow local treatment of conditions produced by local markets. For lines that do not lend themselves to uniform standards, we are committed to reviewing market barriers for further efficiencies. We will take steps to shift the focus of states away from a prior approval system, where appropriate. We will also develop an e-repository for filings, a system for tracking data, and a state certification process.

In addition, we will take steps to shift the focus of states away from a prior approval system, where appropriate.

Regulatory Re-engineering

The benefits of uniform regulatory procedures for insurers selling products to large, sophisticated commercial policyholders are compelling. Many states have adopted and are implementing laws to re-engineer their commercial lines regulatory functions.

We will evaluate the progress of specific states with respect to commercial lines reform, and compare those actions with the Property and Casualty Model Rate and Policy Form Law. Based on this evaluation, we will consider amending the Model and taking other appropriate steps to achieve greater uniformity and consistent application of rate and form requirements with our members.

We will continue to explore avenues to reduce unnecessary requirements for policies sold to insurance purchasers with insurance knowledge and market power. Where appropriate, we will explore increased reliance on the benefits of open competition.

Market Conduct Reform

Market conduct is an essential regulatory tool. Its importance to regulators, producers and consumers will increase as the "Speed to Market" reforms are implemented and the marketplace evolves.

We will examine the current focus, structure and implementation of market conduct programs in the states to identify the issues and concerns that currently exist in this area. This examination will help us determine the merits of voluntary uniform national standards as a basis for market conduct examinations and enforce-

ment actions. In pursuing this evaluation, we will keep in mind the need for flexibility to allow local treatment of conditions produced by local markets.

Facilitating Electronic Commerce that Protects Consumers

The insurance-buying public and industry must be allowed to benefit from the broad range of opportunities that e-commerce offers. As a result, we adopted the recommendations of the Electronic Commerce and Regulation Working Group and endorsed the Uniform Electronic Transactions Act (UETA) for consideration and enactment in each of the states. As e-commerce evolves, we will continue to identify necessary reforms that will facilitate e-commerce while maintaining important consumer protections.

Treatment of National Insurance Companies

We are committed to exploring all options that could offer greater uniformity within the state-based system of insurance regulation.

An initial step toward this streamlined system is already available through the Accelerated Licensure Evaluation and Review Techniques (ALERT) program, which is a streamlined insurer licensing procedure. We will encourage all states to join ALERT and initiate use of the newly developed expansion application process. This will allow streamlined admissions for those companies already admitted in one ALERT state simply through the filing of an expansion application in another ALERT state. The expansion application process introduces elements of reciprocal reliance on the more detailed work of the state reviewing the complete application. We will pursue development of an e-repository for company applications to facilitate one-stop filing.

In addition, we will evaluate the broad range of regulatory issues and concerns and develop a proposal for a state-based system that could provide the same efficiencies as a federal charter for insurance companies.

ATTACHMENT TWO

NAIC Meetings with Federal Agencies

Federal Agency	Date	Key Participants	Notes
Federal Reserve Board ..	April 9, 1998	Governor Susan Philips/George Nichols, Elizabeth Costle.	Initial meeting to open a cooperation dialogue at the Federal Reserve Building in DC.
Federal Reserve Board ..	May 8, 1998	Rich Spillenkothen, Fed supervision chief/Commissioner Terri Vaughan.	Day-long meeting between NAIC and Federal Reserve experts to explore regulatory methods at the Federal Reserve Building in DC.
Federal Reserve Board ..	June 20, 1998	Roger Cole, Fed financial chief/Commissioner Terri Vaughan.	Discussion of RBC and other Accounting/Financial Issues at NAIC national meeting in Boston.
Federal Reserve Board ..	December 5, 1999	Connecticut and Federal Reserve experts handling Citigroup merger.	NAIC/Federal Reserve regulator-only meeting re Citigroup at NAIC national meeting in San Francisco.
Federal Reserve Board ..	January 10, 2000	Governor Laurence Meyer, Rich Spillenkothen/Commissioners George Nichols and George Reider.	Meeting of top leaders from Federal Reserve and NAIC to discuss GLBA cooperation—Held at the Federal Reserve Building in DC.
Federal Reserve Board ..	February 24, 2000	Rich Spillenkothen and numerous Federal and State regulators.	Domestic Joint Forum regarding GLBA compliance issues—Regulators only—Held at Federal Reserve Building in DC.
Federal Reserve Board ..	March 12, 2000 ..	Rich Spillenkothen/Commissioner Terri Vaughan.	Discussion of GLBA issues at NAIC national meeting in Chicago.
Office of the Comptroller of the Currency.	November 17, 1998.	Sam Golden, OCC Ombudsman/Commissioner Donna Lee Williams.	Visit with OCC Ombudsman at OCC's Houston office to review consumer complaint procedures.
Office of the Comptroller of the Currency.	February, 1999	Jerry Hawke, Comptroller	Addressed NAIC commissioners conference in DC.
Office of the Comptroller of the Currency.	March 8, 1999	Sam Golden, OCC Ombudsman.	Addressed NAIC FSM Committee at national meeting in DC.
Office of the Comptroller of the Currency.	June 7, 1999	Sam Golden, OCC Ombudsman.	Addressed NAIC FSM Committee at national meeting in Kansas City.

NAIC Meetings with Federal Agencies—Continued

Federal Agency	Date	Key Participants	Notes
Office of the Comptroller of the Currency.	October 1999	Senior OCC officers from DC and regional offices.	Met with insurance commissioners at their regional zone meetings at NAIC national meeting in Atlanta.
Office of the Comptroller of the Currency.	October 4, 1999 ..	Leann Britton, OCC supervision chief.	Addressed NAIC FSM Committee at national meeting in Atlanta.
Office of the Comptroller of the Currency.	November 1, 1999	Leann Britton/Commissioner Terri Vaughan.	Day-long meeting of senior NAIC and OCC officials to discuss regulatory cooperation at OCC office in Kansas City.
Office of the Comptroller of the Currency.	December 6, 1999	Delora Jee, OCC deputy supervision chief.	Addressed NAIC FSM Committee at national meeting in San Francisco.
Office of the Comptroller of the Currency.	February 11, 2000	Leann Britton, Julie Williams/ Commissioners George Nichols and Terri Vaughan.	Day-long meeting of senior NAIC and OCC officials to discuss regulatory cooperation at OCC office in DC.
Office of Thrift Supervision.	February 27, 1998	Ellen Seidman, OTS Director/ Commissioners Glenn Pomeroy and George Nichols.	Initial meeting of OTS and NAIC leaders to promote regulatory cooperation.
Office of Thrift Supervision.	June 1998	Ellen Seidman, OTS Director ...	Addressed NAIC Banks and Insurance Committee at national meeting in Boston.
Office of Thrift Supervision.	October 14, 1998	Mary Jane Cleary/Jack Chesson.	Discuss next steps in promoting regulatory cooperation between OTS and state regulators.
Office of Thrift Supervision.	November 3-4, 1998.	Rick Riccobono, OTS Deputy Director/Commissioner Terri Vaughan.	Two-day meeting in Kansas City between senior experts at NAIC and OTS to explore regulatory methods and cooperation issues.
Office of Thrift Supervision.	December 16, 1998.	Scott Albinson, OTS Deputy/ NAIC Staff.	Discuss OTS-NAIC regulatory cooperation agreement at NAIC DC office.
Office of Thrift Supervision.	December 1998 ...	Senior OCC officers from DC and regional offices.	Met with insurance commissioners at their regional zone meetings at NAIC national meeting in Orlando.
Office of Thrift Supervision.	April 6, 2000	Ellen Seidman, OTS Director/ Commissioner George Nichols.	Meeting of leaders at OTS office in DC to discuss GLBA implementation issues and promote signing of regulatory cooperation agreements.
Office of Thrift Supervision.	June 29, 2000	NAIC's Nat Shapo/Eric Nordman and senior attorneys from Federal banking agencies.	Consultation meeting regarding implementation of Section 305 insurance sales rules for banks.
Federal Deposit Insurance Corporation.	February 8, 2000	FDIC staff and Jack Chesson	Initial meeting at FDIC office in DC to discuss regulatory cooperation under GLBA.
Federal Deposit Insurance Corporation.	June 11, 2000	FDIC staff/Commissioner Terri Vaughan.	Meeting of FDIC officials and state regulators to explore regulatory cooperation under GLBA at NAIC national meeting in Orlando.
Federal Deposit Insurance Corporation.	June 28, 2000	FDIC staff and Jack Chesson/ John Fielding.	Meeting regarding development of model regulatory cooperation agreement between FDIC and State insurance departments.

Mr. OXLEY. Thank you, Mr. Nichols.
Ms. Williams?

STATEMENT OF JULIE L. WILLIAMS

Ms. WILLIAMS. Mr. Chairman and members of the subcommittee, thank you for inviting the Office of the Comptroller of the Currency to participate in this hearing. The significant changes to the financial services industry effected by the implementation of the Gramm-Leach-Bliley Act make cooperation and coordination be-

tween regulators at the Federal and State levels more important than ever before to achieve effective and efficient regulation of the industry we supervise. I am pleased to have the opportunity to provide an update on these matters.

My testimony today addresses the subjects in which the subcommittee indicated a particular interest: the dual banking system and our coordination with State insurance regulators.

Turning first to the dual banking system, this term refers to the fact that banks may be chartered by either a State or the Federal Government. The development of the system may be traced back to the early years of our Nation. Beginning in 1863, two separate and independent banking systems were operating in this country—the State and National Banking systems. Today, our dual banking system is far more complex and can best be described as two interrelated systems in which most State chartered banks are subject to a significant degree of Federal supervision and regulation. Indeed, the largest component of State bank supervision and regulation today comes from the Federal level. On the other hand, Federal law also makes State laws applicable, to a varying extent, to federally chartered banks.

The dual banking system, however, is not without its detractors. Some have criticized the system as overly complex and burdensome, imposing conflicting standards on equivalent banking organizations, and encouraging laxity in supervision by having the State and Federal regulatory agencies compete with each other for chartering business.

Others have defended the dual banking system as representing federalism in practice, by providing a uniform national system while permitting experimentation and innovation at the State level. It has been argued that the dual banking system provides checks and balances against over-regulation by a single body. Finally, many would say that despite its complexity, our banking system has functioned with notable success in fostering economic opportunity and our Nation's prosperity.

The OCC's oversight of national banks has been interrelated with State insurance regulation for some time and will be even more so following the Gramm-Leach-Bliley Act, which establishes a system of functional regulation. Both before and after enactment of the Act, we have taken a number of actions to coordinate and work with State insurance regulators.

First, the OCC and the NAIC jointly developed a model agreement to share information about consumer complaints with respect to national banks involved in insurance sales activities. We have entered into such complaint sharing agreements with 28 State insurance regulators. These agreements facilitate banks' compliance with consumer safeguards by ensuring that the regulator with the appropriate jurisdiction to resolve the complaint will receive and process the complaint.

Second, we are working to develop a broader agreement that will significantly expand the types of information shared by the OCC and the State insurance regulatory agencies. We are also exploring ways to better share information with State insurance regulators about individuals who have committed fraud or have otherwise been subject to OCC enforcement actions.

Third, in an effort to further develop working relationships between the OCC and the State insurance regulators, we also have been engaged in a continuing and productive dialog with the NAIC and with individual State regulators. To date, regional representatives of the OCC have met with 43 State insurance regulators, and OCC staff regularly consults with NAIC staff and the staffs of the State insurance regulators regarding Gramm-Leach-Bliley Act implementation issues.

Finally, we and the other Federal banking agencies have had very productive discussions with the NAIC regarding the development of Federal regulations implementing the provisions of the Act that address consumer protection concerns in depository institution sales of insurance. The banking agencies have provided a working draft of the proposed rule to the NAIC, and on June 29, representatives of the OCC and the other agencies met with NAIC representatives to discuss the proposal. We expect the proposal, reflecting these consultations, to be issued for public comment later this summer.

Again, I appreciate the opportunity to testify before the subcommittee this morning, and I will be happy to try to respond to any questions the subcommittee may have.

[The prepared statement of Julie L. Williams follows:]

PREPARED STATEMENT OF JULIE L. WILLIAMS,* FIRST SENIOR DEPUTY COMPTROLLER AND CHIEF COUNSEL, OFFICE OF THE COMPTROLLER OF THE CURRENCY

INTRODUCTION

Mr. Chairman and members of the Subcommittee, thank you for inviting the Office of the Comptroller of the Currency (OCC) to participate in this hearing. The significant changes to the financial services industry effected by the implementation of the Gramm-Leach-Bliley Act (GLBA) make cooperation and coordination between regulators at the Federal and State levels more important than ever before. We appreciate this opportunity to share with you the OCC's experience working with State insurance regulators.

As the Subcommittee requested, today I will provide a short overview of the dual banking system. I will then discuss how the OCC is implementing GLBA both through the formal development of supervisory policies together with State insurance regulators, and through our less formal, but equally important, efforts to strengthen and maintain the productive working relationships we have established with our State insurance regulator colleagues. I will conclude my remarks by reporting to you about the status of our work to prepare, in consultation with State insurance regulators, the insurance consumer protection regulations required by section 305 of GLBA.

THE DUAL SYSTEM OF BANKING REGULATION

"The dual banking system" refers to the fact that banks may be chartered by either a State or the Federal Government. The development of the system may be traced back to the early years of our Nation, when popular, and especially agrarian, animosity towards the establishment of banks by the National Government was very strong.[1] The opposition was based on the widely accepted belief that banks encouraged usury, diverted funds from agriculture, increased speculation, and were responsible for a host of other social and economic evils.[2] Nonetheless, a permanent Federal banking system was established in 1863, when the financial demands of the Civil War, and the need for the consistency and uniformity of a national system,

*The views expressed herein are those of the Office of the Comptroller of the Currency and do not necessarily represent those of the President.

[1] J. White, *Banking Law* 7 (1976).

[2] *Id.*

made such action exigent.[3] However, the animus against banks did not prevent the establishment of State chartered banks, and during the period between 1837 and 1863 many banks were formed under State authority. By the time the national banking system began in 1863, State chartered banking was an established presence in the United States.

Thus, beginning in 1863, two separate and independent banking systems were operating in the country—the State and National Banking systems. In the nineteenth century, a bank could be chartered and regulated by either authority without interference from the other.

Today, our dual banking system is far more complex. Starting with the Federal Reserve Act in 1913, Federal regulatory involvement with the affairs of State chartered banks began to grow. This involvement was accelerated by the advent of Federal deposit insurance in 1933, so that today virtually all State banks are subject to substantial Federal oversight. At the same time, Federal provisions began to incorporate certain State laws into the Federal regulatory framework, and made these laws applicable to federally chartered banks. Further, a bank may elect (with regulatory approval) to convert at any time from State to Federal charter, or Federal to State charter. Thus, instead of having two independent banking systems, the dual banking system today can best be described as two interrelated systems in which most State chartered banks are subject to a significant degree of federal supervision and regulation, and where State laws are made applicable, to a varying extent, to federally chartered banks.[4] Indeed, the largest component of State bank supervision and regulation is Federal.

Some have criticized the dual banking system as an overly complex and burdensome institution that imposes conflicting standards on equivalent banking organizations, and which encourages laxity in supervision by having the State and Federal regulatory agencies compete with each other for chartering business.[5] This complexity is highlighted by the fact that the dual banking system actually consists of one Federal system and 50 State systems, since each State is free to construct its own regulatory framework.

On the other hand, others have defended the dual banking system as representing Federalism in practice by permitting individual States the flexibility necessary to provide for the banking services needed by their local communities, and encouraging experimentation and innovation at the State, as well as Federal, level.[6] Further, some have argued that by providing an alternative chartering mechanism, the dual system provides "checks and balances" against over-regulation by a single monolithic body.[7]

One key aspect of the current system of bank regulation for purposes of the Subcommittee's inquiry today, however, is that the OCC's oversight of national banks has been interrelated with State insurance regulation for some time. Since 1916, national banks have been expressly permitted to sell insurance directly pursuant to the so-called "place of 5,000" provision at 12 U.S.C. § 92.[8] After the enactment of GLBA, national banks may also sell insurance through financial subsidiaries without regard to these geographic restrictions.

GLBA'S FUNCTIONAL REGULATION REGIME

GLBA establishes a system of functional regulation that requires each financial regulator to defer to the regulator primarily responsible for supervising particular entities. Thus, in general, State insurance regulators will oversee insurance agen-

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[3] B. Hammond, *Banks and Politics in America from the Revolution to the Civil War* 721-727 (1957). Hackley, *Our Baffling Banking System,* 52 Va. L. Rev. 565, 570 (1966). Two Federal banks were chartered prior to 1863—the First and Second Bank of the United States, each for a period of 20 years. In 1832 President Jackson vetoed legislation renewing the charter of the Second Bank of the United States, effectively ending Federal chartering activity until the Civil War. J. White, *Banking Law* 16 (1976).

[4] For a more detailed description about the dual banking system, see Scott, *The Patchwork Quilt: State and Federal Roles in Bank Regulation,* 32 Stan. L. Rev. 687 (1980); Scott, *The Dual Banking System: A Model of Competition in Regulation,* 30 Stan. L. Rev. 1 (1977); Brown, *The Dual Banking System in the United States* (1968).

[5] *See, e.g.,* Redford, *Dual Banking: A Case Study in Federalism,* 31 Law and Contemp. Probs. 749, 770-773 (1966).

[6] *Id.*

[7] *Id. See also,* Golembe, *Our Remarkable Banking System,* 53 Va. L. Rev. 1091 (1967).

[8] Before GLBA, an estimated 50% to 65% of all banking associations and virtually all banks with assets of more than $10 billion were selling some form of insurance. Larry LaRocco, "Banks' Role in Insurance to Grow After Gramm-Leach-Bliley Act," *National Underwriter,* Nov. 15, 1999, at 7.

cies and companies, securities regulators will oversee registered securities firms, and banking regulators will oversee banking organizations.

The functional regulation provisions in GLBA restrict the OCC's ability to require reports, examine and take remedial actions against functionally regulated national bank subsidiaries and affiliates. For example, GLBA requires the OCC to rely, to the fullest possible extent, on reports provided by national bank insurance subsidiaries to their functional regulator. In addition, GLBA permits the OCC to examine a functionally regulated subsidiary or affiliate of a national bank only if: (1) we have reasonable cause to believe that the subsidiary is engaged in activities that pose a material risk to the national bank; (2) we reasonably conclude—after reviewing reports obtained from the functional regulator—that the examination is necessary in order for us to be adequately informed about the systems for monitoring and controlling operational and financial risks that could pose a threat to the safety and soundness of the national bank; or (3) based on reports or other information, we have reasonable cause to believe that the subsidiary is not in compliance with laws that we have the jurisdiction to enforce. Other statutory standards substantially limit the ability of the OCC to take enforcement actions against functionally regulated entities.

These provisions effectively place the functional supervisor—State insurance regulators in the case of functionally regulated national bank insurance subsidiaries, for example—in a pivotal position to identify activities conducted by a national bank's insurance subsidiary that could compromise the safety and soundness of its parent national bank (or other parent depository institution). Close cooperation with State insurance authorities is thus not only statutorily required, but is essential for us to fulfill the OCC's primary mission of ensuring the safety and soundness of the National Banking System.

To achieve this goal, the OCC will continue to monitor the impact of subsidiaries' insurance activities on the safety and soundness of parent national banks, by examining **banks'** systems and procedures for monitoring and controlling risks arising from those activities and by reviewing carefully the information we receive from State insurance regulators. Moreover, the GLBA functional regulation provisions highlight the importance of developing processes to share appropriate information between the OCC and the State insurance regulators and establishing close working relationships with State insurance regulators. The OCC has taken several actions in furtherance of these goals.

INFORMATION SHARING

The exchange of appropriate and meaningful information not only assists the OCC and State insurance supervisors in identifying individual and systemic risks, but also establishes the foundation for prompt and effective action to address consumer concerns. The OCC recognized the need for cooperative efforts to address consumer concerns well before passage of GLBA. In 1996, the OCC invited State insurance commissioners to the OCC to open a dialogue between two historically distant regulatory systems and to begin exploring ways to better coordinate our efforts. As a result, the OCC and the National Association of Insurance Commissioners (NAIC) jointly developed a model agreement to share information about consumer complaints with respect to national banks involved in insurance sales activities. The OCC then worked with individual State insurance regulators to "customize" the agreement to be consistent to unique features of a particular State's law. To date, the OCC has entered into consumer complaint sharing agreements with 28 State insurance regulators.

These agreements require the OCC to send to the appropriate State insurance regulator copies of all complaints that the OCC receives relating to insurance sales in that State by a national bank. Likewise, the State insurance regulator will send to the OCC copies of all complaints it receives involving a national bank. The agreement also provides that the OCC and the State insurance regulator communicate with each other to the fullest extent possible on matters of common interest, such as regulatory and policy initiatives.

These agreements enhance consumers' ability to remedy their complaints and facilitate banks' compliance with consumer safeguards by ensuring that the regulator with the appropriate jurisdiction and authority to resolve the complaint will receive and process the complaint. Complaints received from the States also will assist the OCC in focusing its examination resources with respect to national banks that sell insurance directly. Information about consumer complaints will help examiners spot trends in insurance sales practices among national banks that sell insurance and in the banking industry in general and enable them to take appropriate supervisory steps if any particular bank generates complaints with more than normal frequency.

The OCC's Customer Assistance Group (CAG), located in Houston, Texas, is primarily responsible for implementing these agreements in coordination with the State insurance regulators. The CAG is fully staffed with banking compliance professionals who log, track and resolve national bank customer complaints with the assistance of a call center employing modern call center technology. As of June 30, 2000, the CAG has referred 70 complaints to those States that have signed the agreement and received 3 referrals from State insurance regulators. All referrals received by CAG are processed and sent to the bank for responsive action, and the information is shared with the appropriate State insurance regulator.

In light of the heavy reliance on State insurance regulation that GLBA requires, we are currently working to develop a broader agreement that will significantly expand the types of information shared by the OCC and the State insurance regulatory agencies. We anticipate that these agreements will provide for the sharing of various types of supervisory information in addition to incorporating the existing consumer complaint sharing provisions. For example, we expect the agreement to follow the GLBA provisions and permit each agency to request from the other information regarding: (1) the material risks to the operations or financial condition of a regulated entity; (2) the insurance activities of a regulated entity; or (3) other matters necessary to disclose fully the relations between a regulated entity supervised by the OCC and a regulated entity supervised by the State insurance regulator, provided the information requested is in furtherance of the agency's lawful examination or supervision of the regulated entity. The agreement is intended to cover the exchange of information involving national banks, national bank subsidiaries, Federal branches or agencies, companies engaged in insurance activities subject to the supervision of the State insurance regulator, and other entities over which the OCC or the State insurance regulator has examination or supervisory authority.

These new, more comprehensive agreements are also intended to cover information relating to enforcement actions. This provision will permit each agency to assess whether the enforcement action poses risks to an entity it regulates that is not subject directly to the enforcement action, and put the agency on notice of possible violations of law or unsafe and unsound practices that may require independent investigation and follow up with the entity it does not regulate. Over the next few months, we expect to work with the NAIC to develop our draft into a model supervisory information sharing agreement that will serve as the basis for agreements between the OCC and each State insurance regulator.

The OCC also is exploring ways to better share information with State insurance regulators about individuals who have committed fraud or have otherwise been subject to OCC enforcement actions. The OCC currently makes this information publicly available through it Web site. For example, the OCC currently lists on its Web site the names of individuals that are the subject of formal enforcement actions, including removals from the industry, orders to make reimbursement, and assessments of civil money penalties.[9]

The OCC has also recently amended its rules relating to national bank corporate activities to include new procedures for sharing with State insurance departments appropriate information relating to initial and continuing affiliations between national banks and companies engaged in insurance activities. The OCC included these procedures following discussions with, and at the request of, NAIC members that they receive some notification when a national bank applies to the OCC to commence insurance operations in a particular State. Under the new procedures, a national bank must describe in its notice or application to the OCC to establish a financial subsidiary or an operating subsidiary, or to make a non-controlling investment in an entity that will engage in insurance activities, the type of insurance activities that the bank is engaged in or will engage in and the lines of business for which the company holds or will hold an insurance license. The OCC will then forward this information to the appropriate State insurance regulator.

MAINTAINING INTERGOVERNMENTAL WORKING RELATIONSHIPS

As I have described, our original consumer complaint sharing agreement grew out of the contacts we initiated with the NAIC in 1996. In an effort to further develop working relationships between the OCC and the State insurance regulators, we have been engaged in a continuing and productive dialogue with the NAIC and with individual State regulators. To date, regional representatives of the OCC have met with 43 State insurance regulators to identify implementation issues arising from the GLBA functional regulation system. Senior OCC representatives attend NAIC

[9]This information is available on the OCC's Web site at http://www.occ.treas.gov/enforce/enforce.htm.

quarterly meetings on a regular basis. These meetings have provided a valuable means for the OCC and State insurance regulators to exchange information about their respective regulatory priorities and supervisory approaches.

OCC staff also has regularly consulted with NAIC staff and the staffs of the State insurance regulators regarding GLBA implementation issues. Senior NAIC and OCC staff have met on several occasions over the past year to discuss the new functional regulation framework. The OCC and the NAIC held an introductory meeting on November 1, 1999. On February 11, 2000, senior OCC, NAIC staff and several State insurance commissioners met to discuss issues such as consultation about affiliations between banks and companies engaged in insurance activities, privacy, consumer protections, a national insurance licensing system, supervision methodologies, and a mechanism for coordination on emerging issues. Also in February, the OCC, the Federal Reserve Board, the FDIC, the OTS, the CFTC, the SEC, the State insurance commissioners, and the State banking commissioners met to discuss Gramm-Leach-Bliley implementation issues.

Going forward, the OCC will build on these relationships as we coordinate our oversight of insurance activities conducted by national banks and their subsidiaries with that of the functional insurance regulators. To this end, the OCC and NAIC are planning a follow-up meeting in August, that I will attend. Among the issues on the tentative agenda for this meeting are: the supervisory information sharing agreement, privacy regulations, insurance complaint resolution procedures, and continuing joint training and outreach opportunities.

INSURANCE CONSUMER PROTECTION REGULATIONS

The OCC, as well as the other Federal banking agencies, also has had productive discussions with the NAIC regarding the development of federal regulations to address consumer protection concerns relating to depository institution sales of insurance. Section 305 of GLBA requires the OCC, the Federal Reserve Board, the FDIC, and the OTS jointly to issue consumer protection regulations that apply to retail sales practices, solicitations, advertising, or offers of any insurance product by a bank (or other depository institution) or by any person engaged in such activities at an office of the institution or "on behalf of" the institution. Among other things, the rules must address: (1) specific disclosures that must be made to the consumer before completion of the insurance sale; (2) the physical segregation of the area of insurance activity from the area where retail deposits are routinely accepted; (3) limitations on referrals by persons accepting deposits in the area where such transactions are routinely conducted; and (4) prohibitions on misrepresentations. The agencies are required to publish final regulations no later than 1 year after the enactment of the GLBA.

The banking agencies have provided a working draft of the proposed rule to the NAIC. On June 29, 2000, representatives of the OCC and the other agencies met with NAIC representatives to discuss the proposal. We expect that the agencies' proposal, which will be issued this summer, will reflect the comments and suggestions provided by the NAIC at that time.

CONCLUSION

The notion of "duality" suggested by the designation "dual banking system" does not, either under the law or in practice, mean that today Federal and State banking regulators operate independently of one another within their respective jurisdictional spheres. In the insurance area, the growing involvement of national banks in insurance activities has required a cooperative relationship with State regulators since well before GLBA was enacted. After GLBA, however, the Federal/State relationship assumes greater importance for the safety and soundness of the National Banking System because of the reliance that the GLBA functional regulation framework places on the first-line supervision of insurance activities by the States. The OCC is committed to continuing to work closely with State insurance authorities not only to implement the express requirements of the statute but also to foster regular, open lines of communication that will facilitate the achievement of both Federal and State regulatory objectives.

Mr. OXLEY. Thank you, Ms. Williams.

And our final witness is the Hon. Neil Breslin from New York State.

STATEMENT OF HON. NEIL BRESLIN

Mr. BRESLIN. Thank you, Mr. Chairman and my fellow New Yorker, Congressman Towns, and members of the subcommittee. As was indicated, my name is Neil Breslin and I represent some 300,000 people in and around the city of Albany, the State capitol. I also serve as the Ranking Member of the Senate Committee on Insurance.

But I am here today in my capacity as Chair of the State-Federal Relations Committee of the National Conference of Insurance Legislators.

As many of you know, the National Conference of Insurance Legislators, known as NCOIL, is an organization of State legislators, most of whom are bankers or participants in the insurance committees in their various States. They bring back information and participate in many of our conferences to facilitate and coordinate in the uniformity of insurance across this country.

On behalf of the legislators active in NCOIL, let me express my appreciation for this opportunity to testify on issues related to financial modernization, globalization and the enactment of GLBA. I would like to point out that with the exception of redomestication and National Association of Registered Agents and Brokers—NARAB—provisions, NCOIL supported the financial modernization legislation that eventually became GLBA. However, the enactment of GLBA has raised questions as to what States are doing to comply with the new law and to respond to marketplace realities.

Against a backdrop of GLBA and of increasingly globalized insurance markets, the National Association of Insurance Commissioners—NAIC—has developed a Statement of Intent: The Future of Insurance Regulation. That statement identifies, among the NAIC's goals, the need for one-stop shopping for insurance products, for national chartering of insurers within a State-based system, and for more expeditious regulatory approval of insurance products.

NCOIL not only supports this statement, it actively supports these goals.

At the same time, NCOIL opposes any proposal that would require amendment of McCarran-Ferguson, the landmark law that authorized the States to regulate the business of insurance. Congress has reaffirmed that authorization in GLBA.

My testimony today will address three specific areas of concern to you and to State legislators. Those areas relate to: NARAB provisions of Gramm-Leach-Bliley, national chartering, and privacy.

As relates to NARAB, since the enactment of GLBA, State legislators have focused on the new law's provision that would lead to establishment of NARAB. GLBA would begin implementing NARAB by November 12, 2002 if at least 28 states have not enacted uniform or reciprocal laws and regulations governing the licensing of resident and non-resident producers.

NARAB would serve as a national licensing authority that would draw on existing State laws to devise uniform licensing requirements. It would serve as the mechanism for agents and brokers to obtain licenses in any State where they want to do business. Unfortunately, it would create yet another regulatory bureaucracy, one

that would significantly undermine the ability of States to regulate insurance.

In its wisdom, however, Congress has given the States time to enact the kind of uniform laws and rules that will make NARAB unnecessary. I am here to tell you that the States can and will do that. And, I am here to tell you that the States will do it within the deadline.

As has been indicated by Commissioner Nichols, the States have already begun. I might add that Kentucky, being the first, moved quicker than their basketball team.

The Kentucky legislation provides, among other things, for a single producer license for residents and non-residents of the State. It would also bar the Insurance Commissioner from assessing a greater fee for an insurance license to a non-resident based solely on the fact of non-residency. It would also allow an individual surplus lines broker's license in Kentucky if reciprocal arrangements existed in other states.

In addition, Missouri and New Hampshire have also enacted similar laws, both of which meet the NARAB test. I have introduced legislation that will meet the same test in New York, which I have every confidence will be passed in our upcoming session.

All these initiatives have a solid, well-thought-out foundation. Their essential basis is a model law developed by the NAIC. The NAIC adopted its model earlier this year, following 2 years of testimony from all segments of the insurance industry, consumer groups, and other interested parties, many of whom are here today listening.

The NAIC model responds to the reality that more efficient and uniform insurance producer licensing is needed to maintain a U.S. competitive edge in an increasingly global economy. At the same time, the model preserves the strong features of State regulation of insurance as authorized under McCarran-Ferguson. It encourages uniformity in areas such as non-resident licensing, exemptions, commissions, appointments, and reciprocity.

Over the last several months, NCOIL has provided State legislators with appropriate information regarding GLBA and NARAB. NCOIL will continue to do so.

In response to a request from NCOIL's President, Deputy Speaker Clare Farragher of New Jersey, several insurance industry trade associations submitted comments to the NCOIL State-Federal Relations Committee regarding their stance on the model. The comments, while acknowledging minor imperfections in the model, demonstrated overall support. Those submitting comments included the American Insurance Association, the American Council of Life Insurers, the National Association of Insurance and Financial Advisors, the National Association of Mutual Insurance Companies, the Independent Insurance Agents of America, and the National Association of Independent Insurers.

Two weeks ago, in Burlington, Vermont, at a National Conference of Insurance Legislators meeting, the model act was adopted unanimously by the National Conference of Insurance Legislators. We have begun to coordinate our efforts aimed at educating legislators and expediting enactment of the model in the States. NCOIL legislators will sponsor the model and work with legislative

leadership and the insurance commissioners in their respective states.

On national chartering, certain insurance organizations have proposed to alter the State-based system by amending McCarran-Ferguson. That could be a profound mistake. Under McCarran, the domestic U.S. insurance industry has grown to a market of more than 5,000 companies, which compete in terms of price and service.

One such proposal would establish a system of nationally chartered insurers. It would allow those insurers to operate free of State insurance rating laws. It would free them to cut prices and seize markets. It would leave consumers protected only by the uneven and prolonged vagaries of antitrust law.

Another proposal would threaten to establish a dual-regulatory system. It would allow for the regulation of large multi-State companies, in part, by a Federal bureaucracy. It would have smaller single-State and regional companies remain under State regulation. Essentially, it would mean that insurers would play by two sets of rules—one for the big guys, one for the little guys. One set of rules would let big national insurers roam free in a universe of opportunity. The other would keep smaller companies corralled in local and State markets. These ideas stem from the frustration of insurers in their efforts to obtain meaningful access to U.S. and multi-State markets.

Admittedly, the process of obtaining a license or policy form approval in several, let alone 51 jurisdictions, can take a prohibitive amount of time. It costs too much money. It impedes innovation.

The essential question is this: Is there a way to preserve the system of State-based regulation and at the same time accommodate the need for national licensing or, as some have called it, national chartering?

NCOIL believes there is a way. That way is through an interstate compact. Under a compact, States could enact licensing and chartering rules that would have the full force of law in each of the compact jurisdictions and across State lines.

The establishment of an interstate compact for insurance regulation would require a single uncomplicated legislative act in each compacting State. States that wish to join the compact would enact that legislation. The compact agency would have legal standing in State laws and in courts. It would be accountable to the governments of the compacting States.

The momentum for a compact has started to build. The NAIC National Treatment Working Group has begun to address the issue of interstate compacts. It has issued several memoranda on the legality and practicality of implementing an interstate compact.

NCOIL developed a comprehensive interstate compact nearly a decade ago. That compact evolved into the Interstate Insurance Receivership Compact, which is now law in Illinois, Michigan, and Nebraska. States can expand on that prototype. It spells out the rules and procedures for governance of the compact, for access to information, and for confidentiality. Former Acting Illinois State Insurance Director James Schacht told a recent NCOIL meeting that extending the Receivership Compact to include agents licensing and national chartering would be entirely feasible.

I have asked the NCOIL staff to prepare language to that effect for examination by the NCOIL State-Federal Relations Committee. Support for exploration of the idea of an interstate compact applicable to insurance regulation came from former House Member J. Alex McMillan of North Carolina in 1993.

Privacy—the States are addressing issues of privacy in the context of GLBA. The NCOIL president has created an Executive Committee Task Force on Privacy. The Task Force consists of the NCOIL president, who will serve as its Chair; myself, as Chair of the NCOIL State-Federal Relations Committee; and the Chairs of the NCOIL Life Insurance, Health Insurance, and Property-Casualty Insurance Committees. The Task Force will review current State legislative proposals on privacy, hold several meetings, including a public hearing, and will recommend a definitive course of action for approval by NCOIL by mid-November.

In summary, let me say that State legislators are, I believe, working to meet both the legal requirements of GLBA as well as the demands of a globalized marketplace. We are working with the NAIC and the National Conference of State Legislatures, probably in a way that we never have before, which in part is because of GLBA. At the same time, we continue to remain proactive in our defense of State primacy under McCarran.

Thank you very much, Mr. Chairman.

[The prepared statement of Hon. Neil Breslin follows:]

PREPARED STATEMENT OF HON. NEIL BRESLIN, SENATOR, STATE OF NEW YORK

Chairman Oxley and members of the Subcommittee, my name is Neil Breslin. It is my privilege to represent 300,000 residents of the City and County of Albany in the New York Senate. I also serve as Ranking Minority Member of the Senate Committee on Insurance.

I appear before you today in my capacity as Chair of the State-Federal Relations Committee of the National Conference of Insurance Legislators (NCOIL).

NCOIL is a non-partisan organization of state legislators whose primary area of public policy concern is insurance legislation and regulation. Many NCOIL legislators chair or serve as members of the committees responsible for insurance in their respective legislative houses across the country.

On behalf of the legislators active in NCOIL, let me express my appreciation for this opportunity to testify on issues related to financial modernization, globalization and the enactment of the Gramm-Leach-Bliley Act (GLBA). I would like to point out that with the exception of redomestication and National Association of Registered Agents and Brokers (NARAB) provisions, NCOIL supported the financial modernization legislation that eventually became GLBA. However, the enactment of GLBA has raised questions as to what states are doing to comply with the new law and to respond to marketplace realities.

Against a backdrop of GLBA and of increasingly globalized insurance markets, the National Association of Insurance Commissioners (NAIC) has developed a "Statement of Intent: The Future of Insurance Regulation." That statement identifies, among the NAIC's goals, the need for one-stop shopping for insurance products, for national chartering of insurers within a state-based system, and for more expeditious regulatory approval of insurance products.

NCOIL supports that statement.

NCOIL supports those goals.

At the same time, NCOIL opposes any proposal that would require amendment of McCarran-Ferguson, the landmark law that authorized the states to regulate the business of insurance.

Congress has reaffirmed that authorization in GLBA.

My testimony today will address three specific areas of concern to you and to state legislators. Those areas relate to:

- NARAB provisions of Gramm-Leach-Bliley,
- national chartering, and
- privacy.

NARAB

Since enactment of GLBA, state legislators have focused on the new law's provision that would lead to establishment of NARAB. GLBA would begin implementing NARAB after three years—by November 12, 2002—if at least 28 states have not enacted uniform or reciprocal laws and regulations governing the licensing of resident and non-resident producers.

NARAB would serve as a national licensing authority that would draw on existing state laws to devise uniform licensing requirements. It would serve as the mechanism for agents and brokers to obtain licenses in any state where they want to do business. It would create yet another regulatory bureaucracy, one that would significantly undermine the ability of states to regulate the business of insurance.

In its wisdom, however, Congress has given the states time to enact the kind of uniform laws and rules that will make NARAB unnecessary.

I am here to tell you that the states can and will do that.

And, I am here to tell you that the states will do it within the three-year deadline set by Congress in GLBA.

The fact of it is that several states have already enacted the required legislation.

Kentucky, under the leadership of its Insurance Commissioner, George Nichols III, has led the way. The Kentucky legislation provides, among other things, for a single producer license for residents and non-residents of the state. It would also bar the Insurance Commissioner from assessing a greater fee for an insurance license to a non-resident based solely on the fact of non-residency. It would also allow an individual surplus lines broker's license in Kentucky if reciprocal arrangements existed in other states.

In addition two other states—Missouri and New Hampshire—have enacted similar laws, both of which meet the NARAB test. I have introduced legislation that will meet the same test in New York.

All these initiatives have a solid, well-thought-out foundation. Their essential basis is a model law developed by the NAIC. The NAIC adopted its model earlier this year, following two years of testimony from all segments of the insurance industry, consumer groups, and other interested parties.

The NAIC model responds to the reality that more efficient and uniform insurance producer licensing is needed to maintain a U.S. competitive edge in an increasingly global economy. At the same time, the model preserves the strong features of state regulation of insurance as authorized under McCarran-Ferguson—state authority and state accountability.

It encourages uniformity in areas such as non-resident licensing, exemptions, commissions, appointments, and reciprocity.

Over the last several months, NCOIL has provided state legislators with appropriate information regarding GLBA and NARAB. NCOIL will continue to do so.

In response to a request from NCOIL's President, Deputy Speaker Clare Farragher of New Jersey, several insurance industry trade associations submitted comments to the NCOIL State-Federal Relations Committee regarding their stance on the model. The comments, while acknowledging minor imperfections in the model, demonstrated overall support. Those submitting comments included the American Insurance Association, the American Council of Life Insurers, the National Association of Insurance and Financial Advisors, the National Association of Mutual Insurance Companies, the Independent Insurance Agents of America, and the National Association of Independent Insurers.

Less than two weeks ago, on July 8, 2000, at the NCOIL Summer Meeting in Burlington, Vermont, state legislators from across the country voted unanimously to approve a resolution in unequivocal support of the uniformity and reciprocity provisions of the model. That vote followed several presentations and public discussions on the model in the NCOIL State-Federal Relations Committee. It culminated nearly two years of discussion at NCOIL meetings.

We have begun to coordinate our efforts aimed at educating legislators and expediting enactment of the model in the states. NCOIL legislators will sponsor the model and work with legislative leadership and the insurance commissioners in their respective states.

NATIONAL CHARTERING

Certain insurance organizations have proposed to alter the state-based system by amending McCarran-Ferguson. That could be a profound mistake. Under McCarran, the domestic U.S. insurance industry has grown to a market of more than 5,000 companies, which compete in terms of price and service.

One such proposal would establish a system of nationally chartered insurers. It would allow those insurers to operate free of state insurance rating laws. It would

free them to cut prices and seize markets. It would leave consumers protected only by the uneven and prolonged vagaries of antitrust law.

Another proposal would threaten to establish a dual-regulatory system. It would allow for the regulation of large multi-state companies, in part, by a federal bureaucracy. It would have smaller single-state and regional companies remain under state regulation. Essentially, it would mean that insurers would play by two sets of rules—one for the big guys, one for the little guys. One set of rules would let big national insurers roam free in a universe of opportunity. The other would keep smaller companies corralled in local and state markets.

These ideas stem from the frustration of insurers in their efforts to obtain meaningful access to U.S. and multi-state markets.

Admittedly, the process of obtaining a license or policy form approval in several, let alone 51 jurisdictions, can take a prohibitive amount of time. It costs too much money. It impedes innovation.

The essential question is this: Is there a way to preserve the system of state-based regulation and at the same time accommodate the need for national licensing or, as some have called it, national chartering?

NCOIL believes there is a way.

That way is through an interstate compact.

Under a compact, states could enact licensing and chartering rules that would have the full force of law in each of the compact jurisdictions and across state lines.

The establishment of an interstate compact for insurance regulation would require a single uncomplicated legislative act in each compacting state. States that wish to join the compact would enact that legislation. It would provide for the establishment of a compact agency that would act through a governing body. The governing body could include the insurance commissioners of each compacting state. The compact agency would have legal standing in state laws and in courts. It would be accountable to the governments of the compacting states.

The momentum for a compact has started to build. The NAIC National Treatment Working Group has begun to address the issue of interstate compacts. It has issued several memoranda on the legality and practicality of implementing an interstate compact.

NCOIL developed a comprehensive interstate compact nearly a decade ago. That compact evolved into the Interstate Insurance Receivership Compact, which is now law in Illinois, Michigan, and Nebraska.

States can expand on that prototype. It spells out the rules and procedures for governance of the compact, for access to information, and for confidentiality. Former Acting Illinois State Insurance Director James Schacht told a recent NCOIL meeting that extending the Receivership Compact to include agents licensing and national chartering would be entirely feasible.

I have asked the NCOIL staff to prepare language to that effect for examination by the NCOIL State-Federal Relations Committee.

Support for exploration of the idea of an interstate compact applicable to insurance regulation came from former House Member J. Alex McMillan of North Carolina in 1993.

Under a compact, the state insurance regulators could meet the widely acknowledged need for national licensing of agents, brokers and companies.

PRIVACY

The states are addressing issues of privacy in the context of GLBA. The NCOIL President has created an Executive Committee Task Force on Privacy. The Task Force consists of the NCOIL President, who will serve as its chair; myself, as Chair of the NCOIL State-Federal Relations Committee; and the Chairs of the NCOIL Life Insurance, Health Insurance, and Property-Casualty Insurance Committees. The Task Force will review current state legislative proposals on privacy, hold several meetings, including a public hearing, and will recommend a definitive course of action for approval by NCOIL by mid-November. NCOIL will vote on the Task Force recommendation at its Annual Meeting in November.

SUMMARY

State legislators are, I believe, working to meet both the legal requirements of GLBA as well as the demands of a globalized market place. We are working with the NAIC and the National Conference of State Legislatures (NCSL) to accomplish this.

At the same time, we continue to remain proactive in our defense of state primacy under McCarran.

Mr. OXLEY. Thank you, Senator Breslin, and all our panelists.

Let me begin my line of questioning with you, Senator Breslin. I am an alumnus of what was known as COIL back then—they added an N somewhere along the line after I left—but I am sure the charge is pretty much the same and the activities are pretty much the same. It was a fascinating experience for me during my tenure in the General Assembly in Ohio to be participating in that organization and have maintained some friendships over that period of time.

You had indicated that NCOIL believes that a solution to uniformity is to establish a series of interstate compacts. I am not aware of the States incorporating or passing any interstate compacts for as long as I can remember. And if that is the case, are interstate compacts necessarily an alternative to the NAIC proposals? Or can they be part of a two-track system toward achieving uniformity?

Mr. BRESLIN. I think they can be part of that system. I know the NAIC is also working on chartering. The chartering, it seems to us, would eliminate the possibility of an additional bureaucracy. The chartering could work on a regional basis. It simply would pass laws which, as you know, would be between and among the States. It would probably identify insurance commissioners as the contact persons within each State. They would meet and develop regulations under those laws that would be effective in the charter States.

Could either act independently or in concert? I think probably the objective would be more independently.

Mr. OXLEY. You have testified that the process of obtaining an insurance license or policy form approval in 51 jurisdictions can "take a prohibitive amount of time, cost too much money, and appease innovation," which I agree with. But you also state that an optional Federal regulatory system would allow large insurers to "roam free in a universe of opportunity". What is wrong with that?

Mr. BRESLIN. I think that in that situation they would have a considerable and distinctive advantage over one-State and regional operators who are operating under specific State laws at the same time. I think it would be ineffective and discriminatory.

Mr. OXLEY. It would be discriminatory against the smaller companies?

Mr. BRESLIN. Absolutely.

Mr. OXLEY. Even though perhaps those companies would be niche players and finding particular markets to deal in and not necessarily directly competitive with the larger company?

Mr. BRESLIN. I believe that would be the case.

Mr. OXLEY. That it would still be discriminatory?

Mr. BRESLIN. Yes.

Mr. OXLEY. And what effect would that have on the consumer? Just lessen his choice?

Mr. BRESLIN. I think it would lessen his choice. I think what would happen is you would run the risk of driving out the smaller companies and leaving the possibility of major companies directing the marketplace in an inappropriate fashion.

Mr. OXLEY. Does the advent of the Internet perhaps make all this argument somewhat moot? That is, won't the larger companies

at some point be able to market their products through every jurisdiction on the Internet and essentially have the same effect?

Mr. BRESLIN. It would depend upon the particular laws they are adhering to. If they are adhering to a different set of rules than the locals, I would still have the same objections.

Mr. OXLEY. But it does present some potential issues, obviously, with this new technology that we find so fascinating.

Do you see any inconsistencies—and if so, what are they—between the McCarran-Ferguson statute and Gramm-Leach-Bliley?

Mr. BRESLIN. Not specifically, no. I think Gramm-Leach-Bliley has still outlined the import of McCarran-Ferguson.

Mr. OXLEY. Thank you.

Ms. Williams, in your testimony you state that the Gramm-Leach-Bliley Act requires each financial regulators to defer to the regulator primarily responsible for supervising particular entities and that in general State insurance regulators will oversee insurance agencies and companies, securities regulators will oversee registered securities firms, and banking regulators will oversee banking organizations.

Let me read Section 301 of the Gramm-Leach-Bliley Act, particularly since there is a lot of my blood in this. "The insurance activities of any person, including a national bank, shall be functionally regulated by the State subject to Section 104."

Functional regulation has never been the supervision of entities. It has always been of activities. That clearly was the legislative intent. Thus, even if the entity is a national bank, the insurance activities of the national bank are expressly required under the Act to be functionally regulated by the States, not the comptroller.

Is this provision or congressional intent in some way ambiguous?

Ms. WILLIAMS. No, I don't think so, Mr. Chairman. I agree with what you said.

What I was trying to do in the testimony is provide a shorthand description of how functional regulation works. But the section you quote and our understanding of the whole thrust of Gramm-Leach-Bliley is that insurance activities, even if they are conducted by the bank directly, are subject to oversight and regulation by the appropriate State insurance regulatory authority.

Mr. OXLEY. Thank you.

You testified, starting with the Federal Reserve Act in 1913, the Federal Government started to get involved with the regulation of State chartered banks. In hindsight, was this Federal involvement necessary, or were there other ways of preserving a purely State-based option?

Ms. WILLIAMS. You are entering into an area where you will get a lively debate from the scholars that look at the structure of the banking industry. They would probably say that if you were starting from scratch, you wouldn't build the system this way, that there would be other more efficient ways to handle supervision and regulation of the banking industry. I think there could have been other choices made. But the way the system has evolved, it has worked.

Mr. OXLEY. I applaud the efforts of the OCC to work with the NAIC and the States to develop model agreements for the sharing of information. In fact, I hope that these joint efforts can serve as

a model to resolve other insurance disputes down the road. But do you have any concerns about the confidentiality of information shared among the agencies? Is there any need for congressional action to authorize or ensure that an agency or association be given additional power to keep information confidential?

Ms. WILLIAMS. I think the issue here, which Commissioner Nichols has referred to, is that the Gramm-Leach-Bliley Act does envision sharing of confidential examination and supervisory information between the Federal banking regulatory agencies and the State insurance regulatory agencies. But there is no particular provision made for information sharing with the NAIC.

The way the information and data systems have been established in the insurance industry, a lot is centralized through the NAIC. That is not covered in current legislation. So there are issues about confidentiality and issues about waivers of privileges that might exist with respect to information if it were shared with the NAIC. These are issues you have dealt with in the Gramm-Leach-Bliley Act with respect to agency-to-agency sharing. So I think the area that might require additional attention is with respect to sharing with the NAIC.

Mr. OXLEY. Commissioner Nichols, would you care to comment on that?

Mr. NICHOLS. Again, I think that is an important element, from our perspective. We think that the NAIC has to have that protection.

In trying to create this uniform system, obviously, which State is going to keep it. Through the association, we have been able to establish the appropriate data bases that maintain the financial information on companies, the issues of disparate actions against agents. The whole process of complying with NARAB will be used through an automated system that is maintained by an affiliate of the NAIC.

So we think it is very, very critical for that protection because that is sort of the entity that we as the States have been empowered to maintain the information on a national level.

Mr. OXLEY. Thank you.

Ms. Williams, in your written testimony, you stated that the OCC was working on regulations addressing the physical segregation of bank deposits taking activity from insurance solicitation.

I am aware that the OCC has been requested to unilaterally preempt State insurance consumer protection laws. While many of these laws probably fall within the safe harbors provisions of the Gramm-Leach-Bliley Act, Congress is unable to reach a resolution on the proper separation of bank loan activities from bank insurance activities. Congress did, however, establish an expedited dispute resolution process for resolving bank insurance disputes and included numerous requirements for the regulators to consult and coordinate with each other.

Do you believe that the intent of Congress regarding the expedited court process and required coordination with the State commissioners has changed? And don't you agree that an agreement among the regulators would be preferable to reduce litigation and long-term legal uncertainty than the unilateral preemption of State law?

Ms. WILLIAMS. Mr. Chairman, I think it is important for me to clarify at the outset that we don't preempt State law. We get requests to issue legal opinions, and we respond to many of them and express our views. But those legal opinions that are issued by the Comptroller of the Currency's Office don't preempt State law. It is only when that issue is taken to the courts by private parties—an affected regulated entity or an affected industry trade group—that the Judiciary makes the decision as to whether or not a particular Federal provision preempts State law.

We are not preempting. We are just providing a view as to how we think the Federal law interacts with State law.

The Gramm-Leach-Bliley Act provides that in a situation where there is a disagreement between a view that we have expressed and a view that a State insurance regulator has expressed, there is an expedited dispute resolution to take that to the Court of Appeals to get a determination. But there is no preemption of the State law until the court reaches a decision.

Mr. OXLEY. But you do take a position. How is that evidenced in the judicial proceeding? In other words, do you file an amicus? What is your role?

Ms. WILLIAMS. We could.

Mr. OXLEY. Have you done so in the past?

Ms. WILLIAMS. We have filed amicus briefs in the insurance area in connection with cases dealing predominantly with annuities. We filed an amicus brief a number of years ago in connection with the litigation that gave rise, ultimately, to the Supreme Court's decision in the Barnett case.

Mr. OXLEY. So there is a history of that?

Ms. WILLIAMS. Of participating in the litigation, yes, sir.

Mr. OXLEY. As a party?

Ms. WILLIAMS. Technically, not as a party but as an amicus or friend of the court.

Mr. OXLEY. Thank you.

Mr. Nichols, we appreciate your leadership to provide for uniformity initiatives in areas like national treatment of companies, speed to market, market conduct reviews. Clearly, without your leadership the States would be well behind the curve in this effort.

Have you established a timeframe for the goals that you set in your statement? How many months can we expect to wait to see what happens? Just give us a crystal ball view of what you might want to do.

Mr. NICHOLS. First, thank you for your kind comments.

The time element we have operated on—when we initially approved the statement of intent, we said that we would like to have the actual proposals that would outline what this national chartering system would look like as of December of this year. Recognizing that many things are moving very quickly, we actually decided to move that back to September of this year.

So our objective is that through our September meeting and the end of the month we would have the final proposals that would be available on the statement of intent so that everyone would have public comment and the States could begin to have discussions with their legislatures going in to the 2001 sessions.

So the first part of the statement of intent in terms of the actual proposals and what we think should happen would be the end of September.

Mr. OXLEY. It might even dovetail with our efforts to have a second hearing on this subject with interested parties, particularly from the industry.

In your written testimony you stated that the NAIC has a working group that is developing a model law to give certain companies national treatment.

How would you propose that that work? And what obstacles do you expect at the State and industry level?

Mr. NICHOLS. What we have looked at in the development of the proposal is to identify what would be the requirements for a company to be eligible for such a license. For example, do you say that you have to have a certain premium volume? Do you say that you have to already be licensed in a number of States? Do we ask the question of, Do you have a product that could roll out to every State?

So we are actually going through the process of identifying the various options one could consider that makes one eligible for a national license. Then we are also going to look at the process of the requirements for the regulatory agent. So if I have a company in Kentucky that would be eligible by product, by premium volume, and by already being licensed in a certain number of States, does Kentucky have the qualifications in terms of our staffing? Are we accredited? Do we meet certain standards for regulating that entity on behalf of all the other States? Or should we look at a group of States that oversee that.

We are trying to get down to—the company would have a single place to go. That organization then would be responsible for working with all the States across the country to make sure that they are complying with the laws and that there is a uniform system.

We have also talked about the need for companies to meet certain financial requirements in terms of their overall financial condition. When we have talked about how to implement that, there are again three options. We could ask that all the States pass the model, where we would have the same in all and would sort of give deference to certain regulators. You could achieve it in that direction.

As Senator Breslin has said, we have also recognized the issue of an interstate compact. Would that be an appropriate tool for us to use?

I wanted to note that there is only one interstate compact that I am aware of in insurance and I am not even sure about the States. I think it is Nebraska, Michigan, and Illinois who initially talked about an interstate compact regarding receivership. I am not sure if that has truly been confirmed by their legislative bodies, but I know there was some activity in that regard. So we have looked at that being an option.

But we have also—and this is what I would call a slippery slope and you may have ice skates on with it—we are looking at whether there is some role that Congress would have to play in assisting us in creating this national system. Obviously, there is legal discussion. If you had an interstate compact, would you even have to

come back to Congress to have Congress approve that in order for it to be implemented?

So we recognize that as we go down this road we are going to have to clarify clearly the role Congress would have to play. But we think it is feasible and achievable that we could create a national license for an insurance company that outlines what the requirements are. We do that to take into consideration a single-State company or a regional company to make sure that they are not put at a competitive disadvantage. But we think we can do that by overlaying it on the State system as long as the State and the company both meet certain very high, stringent standards.

Mr. OXLEY. Finally, you indicated in your testimony that you would need Congress' help, particularly in getting access to the FBI's NCIC computer. In your estimation, would that require specific congressional legislation to accomplish that goal?

Mr. NICHOLS. To my understanding, it would require your approval.

Mr. OXLEY. Thank you.

I now recognize the gentleman from New York, the ranking member, Mr. Towns.

Mr. TOWNS. Mr. Chairman, you did a thorough job. I want you to know that.

Let me begin by asking a couple of quick things.

Mr. Nichols, I understand the NAIC State insurance privacy law provides stronger protection for the consumer than the privacy provision of the Gramm-Leach-Bliley Act. Is that correct?

Mr. NICHOLS. That is correct. If you would allow me to elaborate, the 1980 model act regarding privacy information, which addresses all insurance information, including health—from our perspective, it provides much broader protection. Here is how it does it. One, the standard to be met is an opt-in versus an opt-out requirement. Second, it also applies to affiliates where that the Gramm-Leach-Bliley Act allows affiliates to be treated within the family. Third, it allows a consumer to have access to that information and the opportunity to correct information that may be incorrect. Again, it goes further because it actually addresses the issue of health insurance.

Mr. TOWNS. How many States have adopted it?

Mr. NICHOLS. Sir, 17 States have adopted that.

Mr. TOWNS. Thank you.

Does the OCC final privacy rule enable banks to avoid complying with the privacy laws in these 17 States?

Mr. NICHOLS. From our perspective, we feel like the reading of the Gramm-Leach-Bliley Act says that States can go further in terms of consumer protection. Where it talks about specifically related to State insurance regulators that want to address privacy issues for insurance, there are provisions where it looks like to me if the State itself, through its legislative body, were to pass stronger actions for all participants that possibly a State could require additional protections, even including banks.

I say that, not being a lawyer, even though I have probably tried to practice for years. But there is a question that there is a potential that a State could pass laws that would go farther than the Gramm-Leach-Bliley Act and require it of all financial institutes.

Mr. TOWNS. Hon. Breslin, would you like to comment on that?

Mr. BRESLIN. I would agree with the commissioner.

Ms. WILLIAMS. If I could clarify one point, the privacy regulation is not just an OCC privacy regulation. It is a privacy regulation that has been adopted by all the Federal banking agencies, the Securities and Exchange Commission, and the Federal Trade Commission. All the agencies that were required by Gramm-Leach-Bliley to adopt privacy rules adopted uniform standards.

I agree that for the areas that Gramm-Leach-Bliley covers, it clearly says that States may enact laws that provide enhanced protection.

Mr. TOWNS. Thank you very much.

Mr. Chairman, I yield back.

Mr. GILLMOR. Thank you very much, Mr. Towns.

Ms. Williams, OCC has a web page listing names of individuals subject to enforcement actions. NAIC is developing a similar system. What do we need to do to get the various financial regulators' data bases to coordinate with each other to automatically perform a search and cross-check to alert a regulator that we have a bad actor out there?

Ms. WILLIAMS. Congressman, I think you will find different levels of issues in the coordination and information sharing between the Federal financial regulatory agencies and the State insurance regulatory agencies versus the NAIC. This was the issue we referred to earlier, that there may be a need for some additional Federal legislation to facilitate broader information sharing among the Federal regulatory agencies and the NAIC because it is not typically viewed as a regulatory agency, as compared to the individual State insurance regulators.

Mr. GILLMOR. If we do that, one of the concerns is unauthorized release of information privacy. If Congress moves in that direction, do you have any thoughts at what we ought to do to protect leaks, basically, out of the data base? You are adding a large number of additional people that are going to have access.

Ms. WILLIAMS. I think any time you are envisioning the creation of a significant data base that has negative information about individuals, you want to proceed carefully to make sure that there are standards for the kind of information that goes into the data base and that everybody participating in it is subject to very strong safeguards controlling the circumstances under which information can be released.

Mr. GILLMOR. Senator Breslin, I applaud your work on privacy with the insurance legislators group. We took a stab last year, as part of Gramm-Leach-Bliley, at providing some privacy protection. Many people think it didn't go far enough, but at least it was a first step.

Can you give us any indication where you think you are going to end up with your task force?

Mr. BRESLIN. I think it has heightened the awareness. As Commissioner Nichols said, 17 States passed legislation under the 1980 model act. I know in New York State we have already begun to talk about legislation which would opt in for health-related information and to be more specific and hopefully more uniform in terms of opting out in other areas.

Mr. GILLMOR. As a general rule, do you think that we need to substantially strengthen privacy protection from where we are now?

Mr. BRESLIN. Yes, I do. That is a personal opinion.

Mr. GILLMOR. It happens to be one I share.

Very well, I have no further questions.

I would like to ask unanimous consent for all members to submit statements for the record and to submit follow-up written questions to the witnesses. If Mr. Towns doesn't object, we have unanimous consent.

Mr. TOWNS. Without objection.

Mr. GILLMOR. I want to thank members of our panel for participating. You have been very helpful. Thank you.

[Whereupon, at 11:33 a.m., the subcommittee was adjourned.]